

No. 17070

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United States  
Court of Appeals  
for the Ninth Circuit

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ALBINA ENGINE & MACHINE WORKS, INC.,  
an Oregon Corporation,

Appellant,

vs.

HERSHEY CHOCOLATE CORPORATION, a  
Delaware Corporation, et al.,

Appellee.

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Transcript of Record  
In Two Volumes

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Volume II  
(Pages 313 to 631)

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FILED

JAN 18 1961

Appeal from the United States District Court  
for the District of Oregon.

FRANK H. SCHMID, CLERK



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Respondent's Exhibit No. 23—(Continued)

Lt. Cmdr. Mason: We will call Mr. Sterling as our first witness.

HERBERT W. STERLING

was called as a witness by the United States Coast Guard and, first having been duly sworn, was examined and testified as follows:

Examination

By Lt. Cmdr. Mason:

Q. Please state your full name and address, sir.

A. Herbert W. Sterling, 109 Roanoke, Seattle, Washington.

Q. And what is your occupation, Mr. Sterling?

A. Port Engineer.

Q. And, as I understand it, you are employed in that capacity by Luckenbach Steamship Company, is that correct?

A. That is correct. [207]

Q. And how long have you been employed by that firm, sir?

A. Well, I have been in the total employ for thirty-four years.

Q. With Luckenbach?

A. With Luckenbach.

Q. Would that also be the extent of your experience in the field of port engineer?

A. Well, I haven't been a total of thirty-four years as port engineer, but I have been fifteen years as a port engineer.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Herbert W. Sterling.)

Q. I see. Briefly, Mr. Sterling, what does the duties of port engineer encompass?

A. Well, the various duties—as company representative for lots of ship's business.

Q. And would it be your duty then to arrange for the performance and completion of ship's repairs for vessels coming in, would that be correct?

A. Yes; those are part of my duties.

Q. Now, as I understand it, you served in the capacity of port engineer as representative for the Robert Luckenbach when she arrived at Portland on 2 April, is that correct?

A. That's correct.

Q. And at this time, were there any job orders submitted to you by the vessel?

A. Yes; there were. [208]

Q. Who specifically gave you these particular repair jobs?

A. Well, one was a written order. With the verbal order—at the same time he handed me a written order, he asked me a verbal order and then the Chief Officer gave me a verbal order.

Q. Well, now, when you speak of "he," to whom are you referring?

A. The Chief Engineer.

Q. The Chief Engineer? He gave you a list of items—particular items? A. Two items.

Q. Two items?

A. Two items and then he gave me a verbal order for one item.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

Q. I see. And then you say also that you receive further repair requests from the Chief Mate?

A. Yes, sir.

Q. And how many items were (interrupted)——

A. One.

Q. One item on that? Was that verbal?

A. That's up until that date.

Q. Yes, sir, and that was verbal, was it?

A. That was verbal.

Q. I see. Now, specifically, what were the written job orders that you received from the Chief Engineer? [209]

A. Now, wait a minute—I don't think I have it in my book, but I don't remember what the written orders was. One was to fix the hinges on the meat box door and another was (interrupted)——

Q. Well, we'll come back to that.

A. I can't think of it right now.

Q. We will come back to that question a little later, sir. You also received a verbal from the Chief Engineer?      A. That's right.

Q. What was that?

A. Well, he said his fire line was defective and he asked me if I would repair it and when we took the line out, if we would put the blank flanges on and blank it off. And I issued that order to the yard to remove that pipe and furnish two blank flanges and install them on the fire lines.

Q. I see. Now, when you speak of "the yard," you mean to Albina (interrupted)——

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Herbert W. Sterling.)

A. Albina Engine and Machine Works.

Q. I see. And now, what was the verbal order or repair request given you by the Chief Mate?

A. He asked me to fix a ladder rung on the after ladder in number 5 hatch, lower hold.

Q. On the after ladder of number 5 hatch?

A. That's right; lower hold.

Q. Now, did you personally examine these various items of [210] repair? A. Oh, yes.

Q. And what did you find as the result of your examination of the ladder in the lower hold of number 5?

A. Well, the cargo was some metallic conduit pipes stowed down in the lower hold. It was up and the longshoremen were discharging it and I went back three times in the afternoon to see if it got down to the level of where the rung was out and it hadn't. And I counted the rungs down from the top—I counted down to twenty rungs and I didn't see this particular vacancy where the rung was supposed to be; so I—and then I asked the mate—I asked him three times if he was sure it was that rung—if it was ladder that it was out and he says, "Yes."

Q. This was the Chief Mate?

A. Chief Mate.

Q. So what did you do then with respect to the ladder?

A. Well, I still waited for the longshoremen to



Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

discharge the cargo. The cargo wasn't discharged yet.

Q. Were you aboard the ship most of the day, sir?

A. I was aboard until 3:00 o'clock—about a quarter to 4:00, I went over—my ankle started to paining me so bad, I injured my ankle in the morning in the car.

Q. I see. And then you left the ship then about a quarter of 4:00? [211]

A. I had to. I had to go and take care of my ankle. It was paining me so bad that I couldn't walk on it.

Q. Now, at the time that you left, had you at that time ascertained where the rung was missing?

A. No; he still insisted it was in the after ladder, and I says, "I still couldn't see the bottom of the ladder." So I left the ship. The order remained the same, that the missing rung was at the bottom of that ladder some place.

Q. And then did you return to the ship at a later hour?      A. Yes; I did.

Q. And what time was that?

A. Oh, it was about a quarter to 7:00.

Q. About a quarter to 7:00. What did you find then?

A. Well, we found the vessel was afire.

Q. And what action, if any, did you take at that time?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

A. Oh, there was nothing I could take. The Fire Department had control.

Q. I see. Did you remain aboard the vessel then?

A. Oh, yes; stayed there until after 10:00 o'clock.

Q. I see. Did you make any inquiries as to how the fire started?

A. No; I didn't. I couldn't find anybody that knew how the fire started and couldn't obtain any information.

Q. I see. Now, referring to the renewal of this section of fire main, did you make the necessary arrangements for these [212] repairs to be made?

A. That's right.

Q. Who specifically did you make the arrangements with?

A. Oh, I made it with Dick Bailey of Albina—he is the co-ordinator.

Q. Was this a verbal or written request?

A. Verbal order.

Q. Verbal order? Was it later confirmed in writing?

A. No; he hasn't done it—even up to date we haven't got that far with it.

Q. And did you discuss this particular job with anyone else other than the Chief Engineer, insofar as the crew of the ship is concerned?

A. No; I only deal with the Chief—I deal with the heads of the departments.

Q. Well, how about the Chief Mate, was he ad-

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

vised or informed or in any way did he discuss this matter with you—this particular job of the fire main?

A. No; that is not in his department.

(Documents were marked Coast Guard Exhibits 7A and 7B.)

Q. Now, Mr. Sterling, handing you what has been marked Coast Guard Exhibits 7A and 7B, will you please state whether or not the contents therein represent the repair items which were to be done aboard the Robert Luckenbach?

A. Yes; these are the items. These items were arranged ahead, [213] before the vessel's arrival by letter.

Q. The items contained in Coast Guard Exhibit 7A?

A. That's right.

Q. One through three?

A. That's correct.

Q. And how about those items on 7B?

A. These were issued verbal.

Q. All of the items in 7B were issued verbally?

A. Well, this number 6 here was in consideration previously, but they were just going to take the measurements, but the yard said they could take the measurements and manufacture the boards and install them so I told them to go ahead. And then this number 8 was verbally, too. When we were down looking at the generator, why, the Chief asked me to fix this throttle, so we included that in the repair orders.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Herbert W. Sterling.)

Q. I see. Now, referring to work item one, which pertains to the Uni-strut installation, number two lower 'tween deck, port and starboard, as noted on Coast Guard Exhibit 7A, did that particular repair item involve or require welding, do you know?

A. Well, that is not a repair item. It is what we call—it is a new installation.

Q. An installation, I see.

A. That is a new installation and this item here, why, they had to remove all the dunnage and had to broom clean the [214] decks so they could do the welding and then the deep tanks were all cleaned out, too.

Q. So specifically, then, welding was required?

A. This is all welding—this is all welding. Nothing is drilled or tapped and bolted.

Q. Now, as I understand it, the Coast Guard was not notified in advance of the fact that welding was to be done on board the vessel? Did you make any contact with the Coast Guard relative to that?

A. No; I never have in twelve years of operation in Portland.

Q. I see. Are you familiar with any such requirement?

A. Oh, yes. New York Harbor.

Q. I am speaking now of any requirement to notify the Coast Guard at any waterfront facility?

A. You mean in (interrupted)——

Q. With respect to welding?

A. In this district?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Herbert W. Sterling.)

Q. In this area?

A. No. We always left it up to the yard.

Q. You left it up to the yard?

A. (Affirmative nod.)

Q. I see. Now, referring to item five on Coast Guard Exhibit 7B, which pertains to the renewal of the section of the fire line, what arrangements, if any, did you make for the furnishing of dock water facilities for the vessel for the purposes [215] of maintaining fire protection?

A. Well, I asked—after he put the blanks on—took the line out and put the blanks on, I asked the Chief if he could handle that situation from there on. He said, "Yes," he'd take care of it.

Q. What situation from there on?

A. Well, putting the hose on the fire line. He had a hose available right alongside of the fire line. All he had to do was to move it five feet.

Q. Could you explain a little bit just what that would entail? In other words, would that mean using a fire hose between the sections where the fire main had been removed?

A. No; not in that particular statement. That was the fresh water line off of the dock.

Q. I see. That would be fresh water for furnishing the tanks?

A. That's right. And he was using the fresh water line to fill the forepeak tank and he could have transferred that line up to the fire line, and then he could also have went up on the bridge deck

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Herbert W. Sterling.)

and he could have taken a hose there from number six plug and put it right on the starboard side and cross-connected it.

Q. I see. Well, now (interrupted)——

A. The fire line wasn't totally cut out. The port-side was available, up through the house—the mid-shiphouse and he could have by-passed off of [216] there.

Q. Well, now, the Chief Engineer has already testified here that the only place where water was available from the ship's fire pump was in the engine room space itself. Is this in error then?

A. He is in error.

Q. Where else specifically now would water have been available to the (interrupted)——

A. Well, right after the Chief Engineer's office, there is two half—inch and a half fire plugs. Pressure could be applied on them by starting the fire pump.

Q. Is this inside the deckhouse?

A. It is in the alleyway.

Q. It is in the alleyway?

A. The saloon deck alleyway.

Q. Well, would that be the forward part of the deckhouse?

A. No; just about half way—about midway between fore and aft. I didn't measure it, but I would say midway.

Q. And port or starboard?           A. Port.

Q. On the port?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

A. There was also one on the starboard but the one on the starboard side was cut out.

Q. I see. Where does this particular line lead? As I understand it, the Robert Luckenbach is equipped with a single main system. [217]

A. That's right.

Q. And this particular section of line that was removed and blanked off, as I understand it, prevented water from reaching a certain number of the hydrants? A. That's right.

Q. You say now that there was another line leading up—a riser was it that this hydrant (interrupted)—

A. That's right, it is a three-inch riser that comes off of the line as it comes out from the pump, and it continues vertically right up inside the engine room casing and it leads out to different stations and there are three stations on the portside. One is on the saloon deck, one is on the passenger berth deck and one is on the bridge deck.

Q. I see, and you say you did discuss this with the Chief Engineer to the extent that he stated that he would take care of it?

A. He said he would take care of it.

Q. You had no plans that the contractor in this instance was to handle this, do you? A. No.

Q. I mean, it was not your intention, for example, that while the renewal or the replacement of this line was in progress that the contractor

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Herbert W. Sterling.)

would be required to furnish the necessary (interrupted)—

A. No; that is not in the contract. If the Chief Engineer [218] didn't have the equipment nor the labor, he can make a request to me that he couldn't install it and I would do it for him. But when he said he could take care of it, that is not necessary for me to hire the labor to do it and the equipment.

Q. I see, in other words, then, had it been necessary for the contractor to furnish any dock facilities, that would have been written up as a separate job order also, would it not?

A. Separate order.

Q. And, in this instance, no such order was written to Albina?

A. No such order was issued.

Q. Now, the Luckenbach Terminal pier is equipped with fire hydrants, as I understand it?

A. They have fire hydrants all over.

Q. They do have hydrants all over. Are there—their couplings also of such size as to accommodate the ship's hose?

A. Oh, yes; the national standard.

Q. And the ship's hoses, as I understand it, are two and a half inch?

A. They are national standard two and a half.

Q. Now, referring to item number 4, which is the repair of the ladder rung, what arrangements, if any, were made by you relative to any fire protection during the welding?



Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

A. Well, we don't make any. The yard, when they go up, they generally have a man—they bring three men along and one of [219] them is generally a foreman and then they have a man as a fire watch and then they have a welder.

Q. I see.

A. They are supposed to have the equipment.

Q. Now, with respect to the fire watch and equipment—to what do you refer? Would you consider, for example, a drinking bucket of water near at hand sufficient (interrupted)——

A. No; they should have one of these little spray pumps like they used to have during the war for (interrupted)——

Q. You mean a water spray?

A. Yes; water spray.

Q. Has it been generally—the practice as you have observed it for such a pump to be furnished by the welders?

A. Oh, yes; the yard—the yard—they used to have lots of them. Sometimes they bring a CO<sub>2</sub> along. That's up to the yard, whatever they want to send along with their fire watch.

Q. I see. Did you in your request for this particular repair of the ladder rung, put that in writing, or was that a verbal request made to you?

A. No; that's always—that's always a standing order. We don't write that up every time.

Q. Oh, no; I mean for the repair of the ladder

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

Q. Rung, did you put that in writing, for the repair of the ladder rung itself?

A. No; I gave that to them verbally. [220]

Q. You gave it to them verbally?

A. Sure.

Q. And you received it verbally?

A. After I received it verbally. And then the yard—they write these—these are only temporary orders because they haven't got the codes on them. I would have to put the codes on them.

Q. Right, but, on the day of the 2nd of April, when the fire occurred aboard the ship, that order that had been given to Albina by you had been, with respect to the ladder rung, had been verbally?

A. That's right.

Q. Who did you give this verbal order to?

A. Dick Bailey.

Q. Now, at the time that you gave him this verbal order, did you tell him at—any specific time when the job was to be done?

A. No; because we didn't know what time the cargo would be out.

Q. And it was your intention that it would be done when the cargo was out?

A. When the cargo was out, providing that the cargo was out between 6:00 and 7:00, which is the longshoremen's meal hour. If the cargo wasn't out by that time so we could do the work, we wouldn't do, because it would interfere with the longshore-

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

men, [221] and they won't work while you are welding.

Q. I see. Will they work while the ladder rung is missing?

A. Well, they have a temporary ladder rung on it.

Q. Do you know who installed that?

A. No; I don't know.

Q. Has the ladder rung since been repaired?

A. It has now in the engine room, while they were doing the other repairs.

Q. I see. So, as I understand it then, Mr. Bailey was given to understand that this ladder rung was on the after ladder of number 5 hold and was to be repaired as soon as the cargo was down sufficiently to disclose the missing rung and when the longshoremen knocked off?

A. Well, we were waiting for all the cargo to get out right in that particular locality.

Q. Of the after ladder?

A. Sure, so we would only have the ceiling exposed.

Q. I see. Now, when you left the vessel on the afternoon of 2 April, had the section of the fire main already been removed?

A. Oh, yes; that was out in the morning.

Q. It was out in the morning? And had you been notified of any expected time when the replacement would be back in?

A. Well, the next morning.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Herbert W. Sterling.)

Q. It was to be the following morning? [222]

A. (Affirmative nod.)

Q. Now, since this section of the fire main was out and you were of the impression, having discussed the matter with the Chief Engineer with respect to rigging up a temporary means for fire to the hydrants, then you didn't feel that there was any further responsibility incumbent upon you to ascertain that such fire protection was available at the time the various welding went on about the ship?

A. Well, no; I asked him if he could handle it and he said "Yes." Otherwise, if he wanted any more equipment, he should have requested it and then I would have put an order in for it.

Q. I see. Were you familiar with the cargo that was aboard the vessel?

A. No; I am not; I am never familiar with the cargo.

Q. Did you make any inquiries to ascertain what cargo was in number 5?

A. No; in the after end, I looked at that myself.

Q. And that was, I believe you stated, conduit?

A. That was conduit, both rigid and flexible.

Q. You didn't observe any of the other cargo, what it (interrupted)——

A. No; I just looked at that after section.

Q. Now, I am trying to get a little clearer picture here, Mr. Sterling, relative to the repair of

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

this ladder rung as to why it so happened that the welders came aboard between the hours [223] of 6:00 and 7:00 in the evening when the longshoremen knocked off, for this repair, particularly as it had been stated by you that it was to be done after all of the cargo in the area had been discharged. Can you throw a little light on that?

A. Well, that was not all of the cargo was discharged, because there was some cargo in there that was loaded at Longview in the middle of the hatch. What we call a section is the last two beams, of the hatch—so there was conduit was stowed down there between the ladder and the paper, so when they lifted out that—they lifted out this conduit, there was half of the portside of the hatch had, oh, I'd say it was approximately two inches in diameter conduit—rigid conduit and then on the starboard side of the hatch was this flexible stuff, wrapped up in coils and also aft of the ladder. So the ladder, when I left there, the rung wasn't exposed, so we generally don't like to weld in any place unless we have it right on down to the ceiling or the dunnage.

Q. Have you since ascertained whether any ladder rung was missing on that after ladder?

A. No; there has never been—we never found a ladder rung missing on that ladder.

Q. When did you first become aware that there was a rung missing on the forward ladder?

A. I found that out when I got over there and looking down the hatch at the fire. [224]

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Herbert W. Sterling.)

Q. At the time of the fire?

A. At the time of the fire, after the—when the Fire Marshal went down in the hatch.

Q. I see. You didn't know it before this time?

A. No; I didn't know it before that time.

Q. Now, you have, as I understand, nothing to do with the arrangements relative to discharge and on-loading of cargo?      A. No; I do not.

Q. That would be the job more of the Marine Superintendent, would it?

A. That's right; the operating department.

Q. And you did specifically discuss the repair of the ladder rung in some part with the Chief Mate?

A. Well, he made the request and he gave me the location and he said it was the rung in the after ladder.

Q. And who was present at that time besides yourself and the Chief Mate, if anyone?

A. I don't think anybody was present when he made the request about the ladder.

Q. Was Mr. Bailey present?

A. No; he was away some place. And when he come back, I told him about the ladder.

Q. Well, when you told Mr. Bailey about the ladder, was the Chief Mate present?

A. No; he wasn't present, either, and that was at approximately [225] 11:00 o'clock and the Mate told me about 10:00 o'clock.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

Q. I see. Was it the mate that advised you of the repairs to the meat box door hinges?

A. No; that was the Chief Engineer.

Q. I see. Were any of the other items indicated on Coast Guard Exhibits 7A and 7B referred to you by the Chief Mate, other than this ladder rung?

A. No; that is the only item that he requested.

Q. I see. You did not discuss with the Chief Mate any of the items that had been submitted by the Chief Engineer?

A. No, sir.

Q. Speaking specifically of the removal of the fire main section?

A. (Negative nod.)

Q. Then the Chief Mate to your knowledge was not aware of the fact that this section was to be removed?

A. Well, as far as my knowledge, I don't know what the Chief Engineer—if the Chief Engineer had told him or advised him or anything. I don't know that.

Q. But to your knowledge (interrupted)——

A. Well, it was not in my presence, anyway.

Q. Now, you stated when you came back to the ship later in the evening that the fire was already in progress and the Fire Department was at the scene?

A. That's right. [226]

Q. And what did you do when you came aboard at that time?

A. Chased off a couple of photographers.

Q. Was that the extent of your action?

A. There was nothing else I could do much.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

Q. Was the hatch opened to number 5 at this time?

A. It was wide open. All the covers were off.

Q. Number 4?

A. Well, I don't know about number 4. I think the forward end was open.

Q. And the firemen had hoses into the—directing hoses into the number 5?

A. Well, they had—I don't know—twelve hoses, it looked like to me.

Q. Did you observe whether there were any ship's hoses rigged at that time?

A. No; I couldn't see that, there was so much smoke and everything. There were so many men around there. I only just come up on the port forward corner and looked down there and I was talking to, I presume, the Battalion Chief.

Q. Are you familiar with a hydrant on the terminal pier, presumably located in close proximity to the ship's gangway, or where the ship's gangway was on the 2nd of April?

A. No; about the only thing I observed was generally the location of the fresh water connection.

Q. And where was that located? [227]

A. That was right about in the middle of the midshiphouse.

Q. On the ship?

A. Well, the fresh water connection on the ship or on the dock?



Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

Q. Well, I wanted to know just where it is located on the dock.

A. On the dock, was about just at the center of the midshiphouse, fore and aft.

Q. I see. You didn't observe whether there was any fire hydrant in close proximity thereto?

A. No; I didn't.

Q. When you returned aboard, did you see Mr. Bailey?

A. Yes; I seen him as soon as I come on board.

Q. And did you speak with him with respect to the fire?

A. No; I didn't have an opportunity because he was concerned about one man that they hadn't located. I talked to him later on.

Q. One man that they hadn't located?

A. That's right.

Q. And you spoke with him later on—did you ascertain what was meant by that one man that he hadn't located?

A. Well, that's the way I understood it, but later on, he said that he knew that he sent this one man to take the other two men back to the yard.

Q. Now, when you spoke with him later, was any discussion made [228] as to the probable cause of the fire?

A. No; he wasn't present at the time it started, so he didn't have any concrete information.

Q. Now, as I understand it, the vessel has, since

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

this casualty, been drydocked for repairs and is she off drydock now?

A. Well, I called up the yard and they said they pulled her off this morning and she is up at the loading berth. I haven't seen it myself.

Q. I see. And were you down to make a survey of the damage?

A. Oh, yes; I was at all the surveys.

Q. What is the estimate of damage to the vessel?

A. Well, we haven't got to the estimate yet.

Q. I see. Has there been any discussion relative to estimates?      A. Well, there has been a guess.

Q. What was that?

A. I made a guess, I said between fifteen and twenty thousand dollars, including the drydocking. That's only just a wild guess—if we could ever determine how much bulkhead we was to take out.

Q. Well, now, with respect to the survey of the damage to—to what extent does the damage entail? What does it involve?

A. Well, it involves two shell plates—two sections of shell plates. [229]

Q. Were they buckled?

A. Well, they were overheated and then they were quenched with cold water.

Q. I see.

A. Which warped them; might have caused brittleness.

Q. Where was that, port or starboard?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Herbert W. Sterling.)

A. Portside.

Q. Portside?           A. Forward end of the hold.

Q. Was that the only structural damage observed by you?

A. No; the deckhead beams were overheated and they dropped.

Q. They did drop?

A. The bulkheads is warped—the centerline bulkhead is warped, was renewed; sections of the thwartships bulkhead was renewed.

Q. What was the condition of the tops of the deep tanks?           A. There was no damage.

Q. No damage?

A. It didn't even char the landing pad.

Q. I see.

A. Didn't even blister the paint; didn't burn the paint; didn't do any damage.

Q. Have you received any report or indication of the extent of a—of damage to cargo?

A. No, I haven't. [230]

Q. When is the vessel expected to be ready to depart again?

A. Well, that's when the cargo gets in. I can't answer that question. I don't know how much cargo there is to put in.

Q. Well, are all of the repairs accomplished now as far as you know?

A. Well, there's just a little painting and the

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Herbert W. Sterling.)

paint has to dry out before we can load the cargo in there and we have to deodorize it.

Q. I see. But the major structural repairs—  
(interrupted).

A. The structural repairs are all complete.

Q. Now, is there anything further that you would care to add, Mr. Sterling, which you feel might be pertinent to this investigation?

A. No, there is nothing that I have to add. You have pretty well covered it.

Q. And just for ready reference, where would be the—or how would we most likely be able to get in touch with you in the event it would be necessary to call you again at a later date to testify?

A. Pier 50, Seattle, Washington.

Q. Is there a phone there we could reach you by?

A. Oh, yes.

Q. What is that phone number?

A. Just a minute, they just changed the prefixes. It's Main 3-1208. [231]

Lt. Cmdr. Mason: Well, I have no further questions at this time, Mr. Sterling. I know you are a very busy man. I want to thank you for coming up here today.

A. You are entirely welcome.

(Witness Excused.)

Respondent's Exhibit No. 23—(Continued)

RICHARD DAVID JANSEN

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

Examined

By Lt. Cmdr. Mason:

Q. Will you state your full name and address, sir?

A. Richard David Jansen, 2646 East Balfour Avenue, Fullerton, California.

Q. And your occupation, Mr. Jansen?

A. Chief Officer of the Robert Luckenbach.

Q. And am I correct in assuming that you are licensed by the Coast Guard as a Merchant Marine officer?

A. Yes, I am, sir.

Q. And do you hold a Master's License?

A. Yes, sir.

Q. I have before me a crew list of the Robert Luckenbach for the past voyage, which indicates thereon your license number to be 215 990, is that correct, sir?

A. I wouldn't know the number off-hand. It probably is correct. [232]

Q. How long have you been serving in a licensed capacity in the American Merchant Marine, Mr. Jansen?

A. Approximately six years.

Q. And how long have you been going to sea in all?

A. Nearly fourteen years.

Q. And how long have you been employed by

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

the Luckenbach firm? A. Six years in June.

Q. That would be all of your—nearly all of your licensed time? A. Nearly all, yes, sir.

Q. And how long have you been aboard the Robert Luckenbach? A. Six years in June.

Q. And how long of that time have you served in the capacity of Chief Mate on the Robert Luckenbach? A. Three years in June.

Q. What was your duty prior to that time on the Luckenbach? A. Second Mate.

Q. Second Mate? And that was for approximately three years?

A. No, I started on there as—well, actually as Bos'n about seven years ago, but six years ago as Junior Third Mate.

Q. I see. And you were assigned as Chief Mate on board the vessel on 2 April 1958, the date of the fire in question? A. I was, yes, sir.

Q. And you were aboard the vessel that morning, were you? [233] A. Yes, I was.

Q. As I understand it, you, upon arrival at Portland, submitted certain repair requests to Mr. Sterling, would that be correct, sir?

A. That's true.

Q. What specifically did these repairs involve?

A. Well, it was a verbal order and it involved the repairing of a ladder rung in the after hold of number 5—after ladder.

Q. And this was a verbal request— (interrupted). A. Yes.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

Q. —to Mr. Sterling?

A. To Mr. Sterling.

Q. Was there anyone else present at the time that you made this request?

A. Off-hand, I don't remember.

Q. What was his response to the request? That is, did he indicate when it would be done?

A. Yes, they would try to get it done.

Q. And why did you happen to make this particular request?

A. Because the ladder rung was missing.

Q. How did you establish that?

A. It was knocked out by the stevedores in Los Angeles.

Q. Did you observe it personally, or was this reported to you?

A. This was reported to me. [234]

Q. And where was it reported, in Los Angeles?

A. In Los Angeles.

Q. I see, and who specifically reported it to you?

A. Third Mate.

Q. Third Mate? Did he state that he had observed it?      A. Yes.

Q. And he specifically stated that it was the rung on the after ladder?

A. That, I can't say. I understood him to say it was the after one.

Q. I see. But it was the after ladder that you advised Mr. Sterling that had the rung missing?

A. Yes.

Q. Did Mr. Sterling indicate when the job would

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Richard David Jansen.)

be accomplished? A. No.

Q. Did you ask that it be accomplished at any particular time? A. No.

Q. Now, I have before me, Coast Guard Exhibits 7A and 7B, which Mr. Sterling has stated contained the various job orders submitted to him by the ship for various repairs. I will ask you at this time if you will look over those items, sir, and tell me whether any other than the ladder rung pertained to your department?

A. Other than the ladder rung, only one would pertain to my [235] department and that would be item six.

Q. Item six pertains to what, sir?

A. The deep tank hatch boards to be installed.

Q. And— (interrupted).

A. Let's make sure now. Oh, I didn't look at this. Excuse me. I thought it was a duplicate. The Uni-strut, item number one, would also pertain to my department.

Q. I see. Now, this item number one, the Uni-strut installation, what action would this job have entailed?

A. The construction of a Uni-strut or Orlop deck.

Q. And how was it to be installed, by means of welding? A. Yes.

Q. I see, and at the time that you submitted this, was this also in writing or was it— (interrupted).



Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

A. That was submitted from New York.

Q. From New York?

A. I presume it was, yes.

Q. I see. You had nothing to do with the submission of that job order? A. No.

Q. Had you originally requested the item?

A. No.

Q. But, however, you were familiar with the fact that the job was to be done? A. Yes. [236]

Q. Were you aware of item five, which pertained to the renewal of a section of the fire main?

A. No.

Q. Now, were you aboard on 2 April when the fire occurred? A. No, sir.

Q. What time had you left the vessel prior thereto? A. Approximately 5:20.

Q. And at the time of your departure, were there any shore facilities hooked up to the vessel that you know of? A. I didn't notice.

Q. How about the fresh water line?

A. I didn't notice whether it was or not.

Q. Would that be your responsibility?

A. No.

Q. Whose responsibility would that be?

A. The engineers take care of the water.

Q. They handle the fresh water—filling of the tanks and so on? A. Yes.

Q. And when you returned to the vessel, what time was that approximately?

A. Approximately 10:30 p.m.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Richard David Jansen.)

Q. And what did you observe when you came back?

A. Well, Fire Department—fire in number 5 hold.

Q. Was the fire still burning at that time? [237]

A. Not actual burning; smoldering smoke. I didn't see any actual flame.

Q. I see. Did you make any inquiries at this time? A. Yes; I did.

Q. Who did you speak with?

A. The Captain was there, the Fire Chief.

Q. And from these inquiries, did you ascertain how the fire started? A. Yes.

Q. And further, what had been done in connection with combatting the fire?

A. I was observing what was being done. What had been done prior to that, I didn't know, of course.

Q. I see. Did you contact the mate on watch?

A. Yes.

Q. Did he give you any report?

A. No; not at that time. There was nothing exceptional.

Q. When did you first find out if at all that the ladder rung which was missing was actually on the forward ladder of number 5 hold?

A. Well, that night, when I came back to the ship, I found out that they had attempted to weld forward.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

Q. And did you ascertain what the purpose of this welding forward of number 5 was for?

A. I found out that they were trying to weld the ladder rung [238] up there.

Q. And did you inquire then of the Third Mate as to the need for welding forward when you were of the opinion that it was the after ladder that had the rung missing?      A. No; I didn't inquire.

Q. Did you inquire at any time of him?

A. No; I didn't. I went back and read the damage report.

Q. Who had compiled the damage report?

A. The Third Mate had.

Q. Now, this is the Third Mate and not the Junior Third Mate, is that correct?

A. That's right.

Q. And had entries since been made in the log relative to the casualty?

A. The casualty—the fire?

Q. Yes.      A. Yes.

Q. Did you make the entries?

A. No; I didn't. The mate on watch did.

Q. And that, I understand, was the Junior Third Mate?      A. Yes, sir.

Q. Did you have occasion before going ashore on 2 April, to discuss with Mr. Bailey of Albina Ship, repair of the ladder rung?

A. Before going ashore? [239]

Q. Yes.

A. Yes; I think it was some time in the after-

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

noon we discussed it and the last I knew that they were going to check between 6:00 and 7:00 to see if this space was available—that is, the after end.

Q. You mean for getting at the missing rung?

A. Yes.

Q. And at this time, you were still of the belief that it was the after ladder in number 5?

A. Yes.

Q. And did Mr. Bailey indicate to you when he expected to perform the repair? A. No.

Q. Had you asked him or discussed with him the particular time that would be convenient to the off-loading for doing this repair?

A. No; the last I understood was that they were going to check between 6:00 and 7:00 to see if the cargo was out and repair it.

Q. I see. Now, when you came back aboard the ship the first time following the fire, did you ascertain that the ship's fire main system was inoperative? A. When I first came back, no.

Q. Did you at any time ascertain that it had been inoperative?

A. Yes; afterwards. [240]

Q. And was this your first knowledge that the main had been inoperative? A. Yes, sir.

Q. Now, before going ashore, just prior to the fire, had you given any instructions to the mate on watch? A. No; just standing orders.

Q. What were the standing orders?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

A. About ten or twelve items—standing lights and things like that.

Q. I see. Now, as I understand it, you are normally on day duty, is that correct, in port?

A. Yes.

Q. And would that entail from 8:00 to 4:00 in the afternoon? A. 8:00 to 5:00.

Q. 8:00 to 5:00? And the night watch would consist of two mates, who start from 4:00 and go through to 12:00 and then the next one takes over at 12:00 until the following morning, is that true?

A. Right.

Q. So there is actually an hour overlap there?

A. Yes.

Q. Now, when the Mate came on at 4:00 o'clock, he at that time merely had the standing orders which included the night lights to be exhibited and that sort of thing? A. Yes.

Q. You gave him no specific instructions as to the repairs [241] that were to be accomplished or to expect any repairmen aboard? A. No.

Q. Now, in your capacity as Chief Officer aboard the vessel, is it your responsibility to handle the cargo stowage arrangement?

A. No; not the arrangement.

Q. What specifically do you have the responsibility for in connection with the cargo?

A. Well, I presume I am responsible for the cargo, but not for the stowage of the cargo, to say which compartment is—it is going to go in.

## Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

Q. Who has that responsibility?

A. They employ shore personnel.

Q. They employ shore personnel?

A. Yes, sir.

Q. However, do you keep a record of where each item of cargo is stowed on the vessel?

A. We have a cargo plan.

Q. And who maintains the cargo plan—do you draw that up?

A. No; that's given to us after the vessel is loaded.

Q. I see. Now, when you came in to the Luckenbach Terminals from Longview, what were the plans in connection with the cargo? What specifically was to be off-loaded or on-loaded?

A. Well, what was left of our westbound cargo was to be discharged here and commence [242] loading.

Q. And what did the westbound cargo consist of? A. General cargo.

Q. Well, if you can enumerate some of the items—was there paper? A. Yes; there was paper.

Q. And burlap bags? A. Burlap bags.

Q. Conduit? A. Conduit piping.

Q. What else, if you can recall?

A. Oh, reels and let's see, I would have to give it some thought.

Q. Was there any liquid cargo?

A. Liquid cargo in bulk.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Richard David Jansen.)

Q. Yes. Was there any liquid cargo packaged or drummed?

A. I wouldn't be able to say offhand. We had a reference as to what was down there.

Q. Now, was this cargo that was to be off-loaded—the westbound cargo, was that divided among all of the five holds? A. Yes.

Q. It was. And did you make any provisions when the vessel moored at the Luckenbach Terminal for any concentrated effort to be made on number 5 hold, in order to get to this missing ladder rung?

A. It was talked over with the Marine Superintendent, that [243] they were to sort of concentrate on number 5 aft so that we could do the ladder rung at the first opportune moment.

Q. I see. You discussed it with him, did you?

A. Yes.

Q. How often have you conducted fire drills on board the Robert Luckenbach?

A. Once in every week.

Q. Once every week? Now, is this in port or at sea?

A. Well, it all depends. We usually try to get it in port if we can, so we can put a boat in the water, but if we are not in port during that week, we just don't do it in the water.

Q. Now, I am speaking strictly of fire drill, not boat drill.

A. Fire drill also; once in every week.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Richard David Jansen.)

Q. And was a fire drill conducted while the vessel was at Longview?

A. No; no, the last fire drill was in Los Angeles.

Q. I see, and there wasn't any conducted on the morning of 2 April, when you arrived at Portland? A. No.

Q. Do you recall the date that it was conducted at Los Angeles?

A. Offhand, I think it was on a Friday. Now, I would have to—let's see—about the 28th.

Q. About the 28th of March, and that would be indicated in the [244] log book, whatever the date happened to be? A. Yes; yes.

Q. Now, when you conduct these fire drills, what specifically is done?

A. Stretch hoses and water on deck.

Q. And do you—what is your particular fire station?

A. With the emergency squad—the Bos'n and the Carpenter.

Q. And do you—what is your particular fire station?

A. With the emergency squad, the Bos'n and Carpenter.

Q. And in your past experience at these fire drills, how long does it normally take to get water on deck?

A. At the fire drill with water on deck? A minute, minute and a half.



Respondent's Exhibit No. 23—(Continued)  
(Testimony of Richard David Jansen.)

Q. A minute to a minute and a half. In other words, from the time that the fire alarm is sounded to the time that you have water at the scene would be about a minute to a minute and a half?

A. I wouldn't say more than a minute after the time water is requested.

Q. About a minute after water is requested. Well, now, ordinarily, when the fire alarm is sounded, is that the signal for water—the fire pumps to be started up right away or is this not done until you specifically call the engine room and request water?

A. A request for water is made. [245]

Q. I see. Does this, during your drills, normally coincide with the sounding of the alarm?

A. The request for water?

Q. Yes. A. No, not necessarily.

Q. It is not? A. No.

Q. What normally then is the procedure?

A. The fire drill is sounded and hose stretched, water requested on deck.

Q. I see. The water is requested then after the hoses have been led out? A. Yes.

Q. But as a general rule, this takes approximately a minute then from the sounding of the—or from the request for water until you get the water on deck? A. Yes.

Q. What were the conditions of the fire hoses and fire equipment on the Robert Luckenbach on the date of 2 April?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

A. What are the—— (interrupted).

Q. Conditions? A. ——conditions?

Q. Material conditions, were they good? Satisfactory? A. Yes, sir, as per regulation.

Q. Had you had any recent renewal of fire hose or any [246] other associated equipment?

A. I think I renewed number eleven hose a couple of weeks back.

Q. Now, number eleven hose would be for number eleven hydrant? A. Yes.

Q. And where is that particular one situated?

A. Poop.

Q. On the poop deck. Is that the after-most hydrant? A. Yes, sir.

Q. Would this be on the bulkhead and adjacent to the main deck or would it be on a deck level above? A. It is on the main deck level.

Q. On the main deck level? A. Yes.

Q. How long are these hoses?

A. Fifty feet.

Q. Standard fifty-foot lengths—two and a half inch? A. True.

Q. Now, when you came back aboard, you say about 10 o'clock or thereabouts? A. 10:30.

Q. 10:30, the Fire Department was still there?

A. Yes, sir.

Q. And did you observe whether or not any of the ship's hoses had been strung out? [247]

A. Offhand, no, I didn't inquire or look to see if they were.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

Q. Did you notice if there was any other of the ship's fire fighting equipment out?

A. No, I didn't notice.

Q. You didn't observe whether there were any fire extinguishers or oxygen breathing apparatus of ship's gear?

A. No, I didn't see any.

Q. Did—is the ship equipped with oxygen breathing apparatus?

A. Yes, sir.

Q. And what type of fire extinguishers does the vessel have about the deckhouse on the main deck?

A. About the deckhouse?

Q. Yes. A. The hydrant, that's all.

Q. Are there any extinguishers inboard—hand extinguishers?

A. There would be a CO<sub>2</sub> inside the resistor house.

Q. CO<sub>2</sub> A. Yes.

Q. Are there any soda and acid extinguishers that you know of?

A. No.

Q. None on the ship at all?

A. Oh; on the ship, of course there are. [248]

Q. There are, but none topside?

A. None in the area of the fire.

Q. I see. Now, as I understand— (interrupted).

A. That is the immediate area of the fire.

Q. I see. As I understand it, there is one hydrant that is situated to the starboard and just forward of number 5 hatch coaming, is that correct?

A. Forward and to the starboard of?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

Q. Yes. A. One forward of midships.

Q. Number 5—oh, midships?

A. Just slightly to the starboard of the center, but not starboard of the hatch.

Q. And that would be number 10, then, would it?

A. That would be number 10.

Q. Ten. Now, did you at any time, after you came back aboard, have the necessity of directing the securing of any of the ship's fire-fighting equipment, such as ship's hoses?

A. No, we didn't secure them at all. What hoses were out were left out—we went into the shipyard with them.

Q. Then there were ship's hoses out?

A. Yes.

Q. You stated earlier that you hadn't observed whether there were any ship's hoses out.

A. Not at that time, no. [249]

Q. I see, but you did later, is that it?

A. Yes.

Q. And they were left strung out right up to the time you went into the shipyard? A. Yes.

Q. Now, is there anything further, Mr. Jansen, that you feel you would care to say, which might lend light to this investigation as to the cause of the casualty or anything at all that you would care to say? A. As to the cause of the casualty?

Q. Yes.

A. Well, it was admitted to me by Mr. Bailey of Albina that the sparks started by a live welding

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Richard David Jansen.)

rod or welding gear being lowered down into the hold and striking against metal.

Q. Mr. Bailey specifically stated this to you, did he?

A. Yes, that was the next morning about 8:30.

Q. Did he, Mr. Bailey, indicate the source of his information?

A. No, he didn't expound on it. I just asked him what happened and that's what he told me.

Q. He didn't explain where he had heard this report?

A. No.

Q. Have you received any report or discussed the casualty with Mr. Radovich?

A. Not to any great extent, no.

Q. Did he indicate that he was a witness to the start of the [250] fire?

A. Yes, he did, yes.

Q. Did he tell you what he actually saw?

A. Yes.

Q. What did he say to you?

A. Well, I can't give it to you verbatim, of course.

Q. No.

A. But as close as I can remember. That he went back to check and see the extent of fire protection that was being given back in number 5 and when he arrived there, he seen an abnormally large flash and then smoke billowing out of the hold and he mentioned the fact to the men down below that there was smoke coming out and I am pretty sure they told him that it wasn't—there was no fire, that it was from the welding torch that this smoke was

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

from, and they told that same thing to the Third Mate when he insisted that they get out of the hold; that it was just from a welding torch.

Q. At any time following the fire, did you go down in the hold to examine the scene or— (interrupted). A. Yes, sir.

Q. —or the extent of damage?

A. Yes, sir.

Q. What did you observe when you went down?

A. Oh, the cargo damage, the various plates buckled and the ladder rung, of course, I looked to see if they had done [251] welding or not. I didn't see any evidence of welding done on the ladder rung at all.

Q. What ladder rung?

A. The one forward that was out.

Q. How did you happen to look at the one forward when you were of the opinion that it was the after ladder that had the rung missing?

A. Well, this was the next morning when I made the inspection. Of course, at that time, I realized it was the forward one, you know, when I went down.

Q. I see. You went down and observed that there was one missing on the forward ladder?

A. Yes.

Q. Did you notice whether there were any signs of welding or welding marks on the forward ladder which might have indicated to you that they had started the work?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Richard David Jansen.)

A. That is what I just meant by what I said. I looked to see if they had done—started any welding, and I observed none.

Q. I see. You didn't see any spark contact at any point at all?

A. No, I looked the ladder over well just for the—to see where the torch had struck the ladder.

Q. And you didn't see any such marks?

A. No. [252]

Q. Do you have anything further that you would care to say at this time, Mr. Jansen?

A. No, sir.

Q. Do you know who, if anyone, gave orders for the clearing of the cargo in the vicinity of the forward ladder?

A. As I stated before, Mr. Radovich said he would attempt to clear away the cargo that afternoon and concentrate on that area.

Q. On what area—on the forward or the after area?

A. The after area.

Q. The after area?           A. Yes.

Q. I see. Then as far as you knew, by the time you went ashore, it was still the after ladder that was the area that was going to be cleared for welding?

A. Yes, sir.

Q. You stated that you observed no welding marks in the vicinity of the ladder rung that was missing. Did you observe any other contact points around the hatch coaming or anywhere else in number 5, which might have indicated that a spark had been struck by an electrode?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Richard David Jansen.)

A. I didn't look around the hatch coaming. I just looked at the ladder.

Q. I see, and you stated already that there was nothing indicated there? [253]

A. That any welding had been started.

Lt. Cmdr. Mason: Very well, sir. Thank you very much.

(Witness excused.)

Lt. Cmdr. Mason: It is close to coffee time. Let's take a break at this time.

(Whereupon, a recess was taken from 9:50 o'clock a.m. until 10:07 o'clock a.m., at which time the preliminary investigation reconvened.)

### WILLIAM JAMES CAMPBELL

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

#### Examined

By Lt. Cmdr. Mason:

Q. State your full name and address, sir?

A. William James Campbell, 319 Molino Avenue, Long Beach, California.

Q. And what is your occupation, sir?

A. Bos'n on the Robert Luckenbach.

Q. What union are you with, Mr. Campbell?



Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

A. National Maritime Union, sir.

Q. And how long have you been aboard the Robert Luckenbach in the capacity of Bos'n?

A. Five years, sir.

Q. Were you employed by the Luckenbach firm prior to that time? [254]

A. No, sir, the Grace Line Steamship Company.

Q. I see. How long have you been going to sea in all? A. Twenty-seven years, sir.

Q. And how long altogether have you sailed as a Bos'n? A. About seven years, sir.

Q. And were you aboard the Robert Luckenbach on the date of 2 April, 1958, the date of the fire? A. Yes, sir.

Q. Had you been ashore at all that day?

A. No, sir.

Q. Were you aware of any repairs to be made with relation to the ladder rung in number 5 hold?

A. No, sir, I wasn't.

Q. Were you familiar with any of the repairs that were to be made on the vessel?

A. No, sir, that doesn't come under my— (interrupted).

Q. I see. Now, when the vessel moored at Portland on the morning of 2 April, what duties did you then perform, if any?

A. That is in the Port of Portland?

Q. Yes.

A. Well, we were chipping on the bow; chipping on the boat deck; painting and scraping in the reg-

Respondent's Exhibit No. 23—(Continued)

(Testimony of William James Campbell.)

ular routine of sailors' work. To go through the familiarities of where I had the men placed and the exact details of what they were doing would be—— (interrupted). [255]

Q. Did you have anything to do with the rigging of the cargo handling gear?      A. No, sir.

Q. What, if anything, is your responsibility with respect to the cargo handling equipment?

A. Well, it is my duty, under the supervision of the Chief Officer to see that it is kept in proper condition and working order—to see that all repairs are made where necessary.

Q. And to the best of your knowledge, was it in proper working order?      A. Yes, sir, it was.

Q. Had the running gear, booms and so on, been rigged prior to mooring at Luckenbach Terminal?

A. Now, when this ship—you are talking about when she left—— (interrupted).

Q. Left Longview?

A. ——Luckenbach Pier going to—where was she going?

Q. No, no, now, she left Longview and arrived at Luckenbach Terminal on the morning of 2 April?

A. Yes, that's right.

Q. And was the cargo handling gear rigged at that time upon arrival at the Luckenbach Terminal?

A. No, it was, the booms were wung in.

Q. The booms what?

A. Were wung—what we call wung in—they are swung in. [256]

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

Q. I see.

A. You see, when they leave one pier and go to another—— (interrupted).

Q. And then who swings them out?

A. The longshoremen, sir.

Q. The longshoremen do that?           A. Yes.

Q. I see.           A. They trim their own gear.

Q. Now, did you go ashore at all on that day?

A. No, sir.

Q. You did not?           A. No, sir.

Q. And you were aboard when the fire broke out?           A. Yes, sir.

Q. And what was your—what time and where were you at the time that you first realized that there was a fire aboard?

A. When I first realized there was a fire, I was going out to make a telephone call. I would say the time was 6:30 or twenty minutes to 7. I looked aft and I see Kand, the Second—Third Mate, moving in a sort of a fast manner back aft by number 11 fire hydrant. I also saw smoke coming out of number 5 hatch, so I rushed back to assist him and we got a hose strung out to—no, I didn't assist him. I saw there was a fire and went over to number 9 fire hydrant and removed a hose from there and I [257] carried it back, thinking there might be an extension needed and I laid it on deck and then helped Mr. Kand with the fire hose from number 11 fire hydrant, which is aft of number 5 hatch on the

Respondent's Exhibit No. 23—(Continued)

(Testimony of William James Campbell.)

portside. We strung the hatch over the—strung that hose over the hatch.

Q. I see. Now, you came down then to the gangway for the purpose of going ashore to make a telephone call? A. That's right.

Q. And that's when you observed smoke and—(interrupted). A. That's right.

Q. —was there any activity back there? Were there any people there other than the mate?

A. Just the—there was the two mates—there was Kand and Proctie, the Junior Third Mate.

Q. I see. And then, as I understand it, you went immediately to number 9 hose?

A. That's number 9 hose and carried that back to—(interrupted).

Q. And that is situated where, sir?

A. That is situated right outside—forward of the starboard side of number 4 hatch forward.

Q. I see. And you actually strung out that hose, did you?

A. That's right. It was coiled up and I carried it back, sir.

Q. I see. Was it connected to the hydrant? [258]

A. Yes, sir.

Q. And so you unraveled the (interrupted)—

A. No; it is coiled up—flaked in that manner (indicating) on a rack—on a bracket. So I uncoupled it, put it under my arm and carried it back to number (interrupted)—

Q. You carried the length of hose back?

Respondent's Exhibit No. 23—(Continued)

(Testimony of William James Campbell.)

A. The coiled length of hose back.

Q. Then it wasn't secured to the hydrant?

A. It was, but I would have to let it go first. It was secured to the hydrant on (interrupted)——

Q. Was it coupled?

A. Yes; onto number (interrupted)——

Q. Oh, and what was your purpose of uncoupling it?

A. Because I had to get it back to number 5, sir.

Q. I see.

A. I had taken it back as an extension.

Q. Oh, as an extension?           A. Extension.

Q. Now, I understand. And then you placed it down on the deck there, did you?

A. That's right, in a convenient place where it could be contacted.

Q. And then you assisted the Junior Third in (interrupted)——           A. The Third Mate.

Q. Oh, the Third Mate. [259]

A. Mr. Kand.

Q. That was Mr. Kand?           A. Mr. Kand.

Q. In rigging number 11?

A. Number 11 hose, that's right.

Q. And was number 11 hose coupled to the hydrant?

A. It was coupled to the hydrant, sir.

Q. I see, and did it reach to number 5?

A. It reached to number 5 and ten feet leading.

Q. I see, and did you actually hang it over the hatch coaming?           A. Yes, sir.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

Q. And down into the hatch? A. Yes, sir.

Q. Could you observe anybody down there?

A. No, sir; the fog was too—the smoke was too dense.

Q. I see. Do you know if anyone was down there at the time? A. No, sir; I didn't.

Q. You didn't hear anyone talking down there?

A. But I heard Mr. Kand say that there was a man down there—a welder down there and that's all I know.

Q. I see. Now, at any time during the course of the proceedings there, did you hear anyone in the hold call out "fire" or "let's have water," or make any remark? A. No, sir; I didn't.

Q. I see. And then your only knowledge of a man being in [260] number 5 is what Mr. Kand has told you? A. Hearsay.

Q. How long would you say it was from the time you first observed smoke at number 5 to the time that number 11 hose was strung out and into number 5?

A. I would say it wasn't any more than seven minutes after.

Q. Seven minutes?

A. About seven minutes.

Q. Do you feel that it was that long—that it took seven minutes from the time you first observed there was a fire to the time that you put number 11 into the hold?

A. No; I don't suppose it would be that long.

Respondent's Exhibit No. 23—(Continued)

(Testimony of William James Campbell.)

Q. Did it appear to you to be fairly rapid?

A. That is a rash statement I made there, because number 11 hose is adjacent to number 5 hatch and it wouldn't really take that long. I would say about three or four minutes.

Q. All right. What did you do then, Mr. Campbell?

A. Well, I was holding onto the hose and there was no action so then the firemen came and I left the hose that I was holding and assisted the firemen.

Q. About how soon after you had stretched out number 11 hose to the number 5 hatch did the firemen arrive?

A. I would say it was about five or seven minutes.

Q. I see. So, in other words, then, you feel that there was five or seven plus three or four minutes for rigging number 11 [261] hose a total of maybe ten or twelve minutes between the time you first observed smoke to the time the Fire Department arrived, is that about right?

A. That's about right, sir; yes.

Q. Ten or twelve minutes would be a fair approximation?

A. To the best of my knowledge, yes.

Q. Now, at any time did you hear the fire alarm sound?

A. Yes, sir; I did.

Q. The ship's general alarm?           A. Yes, sir.

Q. When did this sound?

A. As soon as I observed the fire from the gang-

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

way. As I said, I was going ashore and as soon as I was going to go aft towards the fire aft, I heard the bells—the general alarm.

Q. Now, did you hear it again after that or was that the only time you heard it?

A. Well, then I didn't pay much attention to anything because I was more interested in working aft.

Q. I see. Now, when you first came back to the vicinity of number 5, you were on the portside of the ship, were you?

A. I was on the portside, yes, sir.

Q. And where was the Third Mate and Junior Third Mate located?

A. The Third Mate was working, as I said, by number 5—11 fire hydrant. [262]

Q. What was he doing—coupling the hose to the hydrant?

A. He was stretching it—getting it off its rack.

Q. I see.

A. And Mr. Protic, he was proceeding forward at a rapid pace. He was going rather fast when I passed him. Now, where he was going or what he was going to do, I have no knowledge.

Q. I see. And what was the condition of number 5 hatch, insofar as the tarpaulin, hatchboards and covering and so on were concerned?

A. Well, on the after end, I believe there was three pontoons taken off for the purpose of unloading cargo.



Respondent's Exhibit No. 23—(Continued)

(Testimony of William James Campbell.)

Q. On the after end? A. Yes, sir.

Q. And that left an opening of approximately what?

A. I would say about twelve feet. I really don't know what the width of the pontoons are, but I would say they are four feet, anyway.

Q. Four feet in width?

A. Rough guess on the measurements.

Q. I see. When you say twelve feet, you mean the width of the hatch thwartships?

A. That was the opening of the hatch now. These three pontoons off, I would say you would have (interrupted)——

Q. Off the after end? A. Yes. [263]

Q. So it was actually open from port to starboard side, the hatch, on the after end?

A. Yes; the pontoon reaches from port to starboard on the hatch, sir.

Q. And there were three of these off?

A. Yes, sir.

Q. So probably a total of twelve feet forward of the after end was open? A. Yes.

Q. Now, what was over the forward end?

A. Tarpaulins and there was a tent strung up there.

Q. There was a tent over it?

A. There was a tent strung up, but it wasn't strung up in orderly fashion—strung up in a haphazardly manner, just because we were coming up

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

from the other port, it wasn't rigged up in proper fashion.

Q. Were there any longshoremen in the vicinity?

A. There was one longshoreman boss, I believe, there.

Q. Where was he situated?

A. On the after winches, sir.

Q. On the after winch?

A. Working on the after winches there, with a tent or some sort, I don't know.

Q. I see. Was anyone working on the tarpaulin that covered the forward part of number 5 [264] hatch?

A. No, sir.

Q. Was there anyone else present in the area when you arrived that you observed?

A. No; there was one of the sailors, he was stringing the hose on the starboard side—Goedig.

Q. Was he the Deck Maintenance Man?

A. Right, sir—Goedig—yes, Deck Maintenance.

Q. And he was rigging the hose from the starboard side from what hydrant, do you know?

A. He was running from number 10, sir.

Q. Number 10, and that is the one on the (interrupted)——

A. Starboard side.

Q. ——the starboard and forward of number 4?

A. That's right.

Q. What did you do next, Mr. Campbell?

A. It's starboard and forward of number 5, sir. That's 10.

Respondent's Exhibit No. 23—(Continued)

(Testimony of William James Campbell.)

Q. Oh, I see. Forward of number 5 starboard is number 10 hydrant? A. That's right.

Q. What did you do next, after stringing out the hose? You stated that you then assisted the Fire Department? A. Yes.

Q. What specifically did you do?

A. Well, they were getting hoses aboard and I tried to get—to help them get them aboard as fast as they could. They were [265] struggling by themselves and so I pitched in and helped.

Q. Did you hear anything mentioned about the fact that the ship was not getting water to the ship's hoses? A. No, sir; I didn't.

Q. Did Mr. Kand or Mr. Protic mention it?

A. They said, "We are not getting water," but I didn't question why or why not.

Q. Did you observe whether anybody brought any fire extinguisher to the scene?

A. Yes, sir; Mr. Protic did.

Q. He did bring a fire extinguisher?

A. When he first observed it, he brought a fire extinguisher to the scene of the fire and left it—placed it up on a pontoon on the hatch.

Q. I see.

A. That was on the starboard—portside, sir.

Q. Did you overhear anyone mention the suggestion of covering number 5 hatch with a tarpaulin?

A. Yes; I believe Mr. Kand said he wanted to do that.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

Q. That he wanted to cover the (interrupted)—

A. Some remark about covering the hatch—said it would take too long to cover the hatch, for what purpose, I don't know what they were going to do.

Q. I see. Was any mention made of the use of the CO<sub>2</sub> system in the hold? [266]

A. Mr. Kand mentioned the CO<sub>2</sub> system, but then he wasn't sure if there was anybody in the hatch. Didn't know if there was a man in the hatch or not.

Q. Now (interrupted)—

A. He didn't think it would be wise.

Q. —referring to this reported man in the hatch, did you ever observe anyone come out of the hatch?      A. No, sir; I didn't.

Q. You did not?      A. No, sir.

Q. So, as far as you know then, you are not positive that there ever was a man down there?

A. No, sir.

Q. And did you remain at the scene during the course of the fire?      A. Yes, sir; I did.

Q. And up to the time that the firemen reported the fire out?      A. Well, almost that.

Q. I see. Was your duty on that particular day of 2 April, were you assigned to day work?

A. Yes, sir.

Q. And what time had you actually gone off your day work schedule?      A. Five o'clock, sir.

Q. Five o'clock? [267]

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

A. Five o'clock, yes, sir.

Q. And you had supper aboard, did you, before the fire?      A. Yes, sir; yes, sir.

Q. Now, did you go ashore that evening at all?

A. Whenever the fire was completely out, then I went ashore, sir.

Q. And at about what time would that have been?

A. That would have been about 8:30, sir.

Q. About 8:30. Did you observe when you went ashore whether or not there were any fire hoses rigged to the dock installations?

A. No; I didn't, sir.

Q. You didn't see any?      A. No, sir.

Q. Had you observed any earlier?

A. No, sir.

Q. Did you encounter any difficulty with the cargo handling gear that evening or observe anything unusual or out of the ordinary with respect to any of the runners or the winches or rigging?

A. No; I didn't. One of the longshoremen parted a runner aft, as far as I know.

Q. Did you have occasion to report to the mate, either Mr. Kand or Mr. Protic, the fact that one of the runners had parted?      A. Yes, sir. [268]

Q. When was that?

A. It was just when the fire was first witnessed—this when he parted the runner.

Q. When had that runner parted? Not at the time of the fire, was it?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

A. Just almost before the fire, sir.

Q. What time had the longshoremen knocked off?

A. I really don't know. I knew they were around. I don't know what time they knocked off that day.

Q. But the runner parted after they were gone?

A. Yes, because this longshoreman boss was working on it, for what purpose, I don't know what he could do.

Q. I see. He was working on the runner?

A. He was working with the winch, yes—the runner.

Q. Now, had you engaged in the fire drills held aboard the Robert Luckenbach in the past?

A. Yes, sir.

Q. And what is your fire station?

A. The fire station is the emergency squad.

Q. How frequently have you attended such drills?      A. Once a week, sir.

Q. Once a week. And, as I understand it, the last drill held prior to this fire was in Los Angeles?

A. Yes, sir.

Q. Would that be correct? [269]

A. That's correct, sir.

Q. What did you say your station was?

A. On emergency squad, sir.

Q. On emergency squad, and that is under the supervision of the Chief Mate?

A. The Chief Mate in charge, yes.

Respondent's Exhibit No. 23—(Continued)

(Testimony of William James Campbell.)

Q. Do you have some particular item that you are required to handle?

A. The lifeline, sir.

Q. The lifeline? A. Yes, sir.

Q. Now, after the firemen arrived or at the time the firemen arrived, I should say, were there other crew members besides yourself and the two mates in the vicinity?

A. Yes; there were about eight sailors—seven or eight sailors on deck, sir, in the deck department. One fireman that I know of. How many of the steward's department, I have no knowledge.

Q. And also Goedig, the (interrupted)——

A. Goedig, the day man, yes, sir.

Q. ——Deck Maintenance? A. Yes, sir.

Q. And did they assist in any way?

A. Yes; they did. We got orders then from one of the firemen to remove the pontoons and tarps from number 5 hatch. [270]

Q. And did you proceed to (interrupted)——

A. Gave those orders to Kand and Kand gave the orders on to me to take the pontoons off. I took the winches and supervised the taking off of the pontoons, and stored them on the starboard side in an orderly fashion. We removed them all but one, the center pontoon for the convenience of the firemen to get to the fires.

Q. I see. How long would you say this took in all?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

A. I would say it would take about ten to twelve minutes, sir—to remove the pontoons and tarps.

Q. And you say you use the winch for this purpose?  
A. Yes, sir.

Q. And how about this broken runner?

A. We use the forward winches, sir. The forward boom.

Q. I see, and the runner was on the after winch, was it?

A. That's right; after winch starboard—number 19 winch, sir.

Q. Now, in the meantime, while you were removing them, the firemen were proceeding with fighting the fire?

A. Yes; they had kept water down there from one of the—from the forward pontoon.

Q. How many hoses did they use, do you recall?

A. I would say they had all of five hoses down there, sir, to the best of my knowledge.

Q. Were they rigged from shore units—shore trucks? [271]

A. Yes, sir; they were using their own pumps.

Q. I see, and did you observe any fire boats to come alongside?

A. Yes; there was a fire boat on the starboard side, sir.

Q. And did he rig a hose at all?

A. I can't recall if he had a hose or not, sir.

Q. I see.

A. But I do remember one of the sailors calling



Respondent's Exhibit No. 23—(Continued)

(Testimony of William James Campbell.)

for a heaving line to take a hose on board. Now, whether they used a hose or not, I can't say, sir.

Q. Now, at any time thereafter, did you assist in the removal of any of the cargo?

A. No, sir.

Q. You did not?           A. Not that I recall.

Q. Did the longshoremen return while you (interrupted)—

A. No, sir; the longshoremen knocked off that night.

Q. They had knocked off? They never did come back?

A. They did come down but they were not—sent home.

Q. I see. They didn't come aboard then?

A. No, sir.

Q. Now, when you came down by the gangway with the intention of going ashore to make a phone call, was there a gangway watchman there at the time?           A. Yes, sir; there was. [272]

Q. And this was a Burns Detective man, was he?

A. Yes; uniformed watchman. Where he was from, I don't know.

Q. He wasn't a crew member, as I understand?

A. No, sir.

Q. Did you say anything to him at this time?

A. No; I didn't. I don't recall saying anything to him.

Q. Did you speak with him later?           A. No.

Q. Or did he have anything to say himself?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

A. I might say "hello" or something, but not in reference to the fire. I don't recall anything concerning the fire, no.

Q. Now, in the course of your experience at fire drills on board the Robert Luckenbach, has it actually been required at these drills that water is brought to the scene of the supposed fire at drill time? Do they actually arrange for water to be brought to the nozzle of the hose?

A. Well, the hoses are stretched out, sir.

Q. And water run through them?

A. And the alarm given, and it seems as soon as the alarm is given, the water automatically goes on.

Q. I see. What normally do you do? Do you open the hydrants and run the water through the nozzle over the side?

A. Yes, sir; that's right, sir.

Q. And approximately how long does it take between the time the fire alarm is given until the time that you actually have [273] water going over the side?

A. I would say it would take less than a minute. In fact, it is a very short time. Very short time.

Q. Now, prior to the fire, were you aware of any ladder rung missing in the number 5 hold?

A. No, sir; I had no knowledge of that at all, sir.

Q. None at all?                   A. No, sir.

Q. Did you ever come to realize that there was

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

a rung missing?           A. No, sir.

Q. At any time?

A. No, sir. I didn't (interrupted)——

Q. How about after the fire?           A. No, sir.

Q. Are you aware of it now?

A. I am aware of it now, sir.

Q. When did you first become aware of it?

A. Well, I had been—I heard them talking about it after the fire, wondering what was the purpose—what were they doing down there and somebody said it was a fire rung. That is only hearsay. I don't know whether it was a fire rung or not.

Q. I see. Did you at any time between the time that you knocked off watch for the day and up to the time when you observed the smoke back aft, did you, during that interval, at [274] any time observe welders come aboard the ship?

A. No, sir; I hadn't.

Q. Had you at any time during the day observed welding apparatus on the pier?

A. No, sir; I hadn't.

Q. Now, when you proceeded back to the scene of number 5, from which the smoke was emitting (interrupted)——           A. Yes, sir.

Q. ——did you observe any welding equipment at that time, or wires leading into the hold?

A. No; I didn't. I didn't observe any lines going across the deck. I didn't; no, sir.

Q. Are there, to your knowledge, "No Smoking" signs posted about the ship?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

A. Yes, sir; on the forward and after ends of the resistor houses.

Q. Which are the houses between each of the cargo holds by—cargo hatches?

A. Yes, sir; they are conspicuously exposed.

Q. I see. Are there any normally posted in the cargo holds themselves?

A. Not that I know of, sir.

Q. Have you since made an examination yourself of the scene of the fire?

A. Not since then, no, sir. [275]

Q. Not since when? I mean, since the fire has been extinguished, have you been down in the hold at all?

A. No, sir; no, sir.

Q. You have not?

A. Just to look down at the—putting the new plates in over there at the drydock, that's all.

Q. I see.

A. I didn't make an inspection, no, sir.

Q. Now, it was brought out earlier that a temporary ladder rung had been installed to replace that area on the forward ladder of number 5 where the rung—the original rung was missing.

A. Yes, sir.

Q. Did you have anything to do with the rigging of that temporary ladder?

A. No; that would come under the mate and the carpenter. The carpenter keeps the rung and the mate must have got the rung from the carpenter and installed it himself.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

Q. Do you know offhand how many firemen appeared on board at the scene?

A. No; I'm sorry, sir; I haven't the slightest idea.

Q. Would it have been a large number? Was it, say, over five men?

A. Oh, there was over five firemen there, yes, sir.

Q. There were over five? Would there have been ten? [276]

A. I knew there was over five, but I wouldn't even try to guess at the number that was there.

Q. Now, when you first arrived at the cargo hatch and looked down, were you able to see anything at all down there?

A. No, sir.

Q. Smoke was too thick?

A. Too dense, yes, sir.

Q. And I believe you stated earlier that at no time did you observe anyone come out of this hatch during the time you were there?

A. No; I didn't.

Q. Is it possible that someone could have been down there and came out without you observing him or were you keeping a watchful eye on the hatch at all times after your arrival?

A. I wouldn't even make an attempt to say, sir. I wouldn't.

Q. Now, is there anything further that you would care to add, Mr. Campbell, that you feel might throw light on this investigation, that hasn't already been brought out by the questioning?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of William James Campbell.)

A. No; there isn't. There isn't anything more that I can help you with. All the questions you asked, I answered, so there isn't anything I can help you with now.

Lt. Cmdr. Mason: Very well, sir; thank you, very much.

A. Thank you.

(Witness excused.)

Lt. Cmdr. Mason: That looks like it. We will adjourn until [277] 1:00 o'clock.

(Whereupon, an adjournment was taken from 10:35 o'clock a.m. until 1:05 o'clock p.m., at which time the preliminary investigation reconvened.)

#### Afternoon Session

#### CARL L. JOHANSON

was called as a witness by the United States Coast Guard and, first having been duly sworn, was examined and testified as follows:

#### Examination

By Lt. Cmdr. Mason:

Q. Would you please state your full name and mailing address, sir?

A. Carl L. Johanson, 6220 S.W. Beaverton Highway.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Carl L. Johanson.)

Q. And how do you spell that last name, Mr. Johanson?      A. J-o-h-a-n-s-o-n.

Q. And how are you presently employed, Mr. Johanson?      A. Previously?

Q. Presently?

A. Oh, I'm guard with Burns Detective Agency.

Q. I see. How long have you been working for them?      A. Well (interrupted)—

Q. Approximately?

A. —I have worked steady, but then it is a little over a year—more than a year.

Q. I see. Now, as I understand, you were standing gangway [278] guard on board the Robert Luckenbach on the evening of 2 April when the vessel had a fire aboard?      A. Yes.

Q. And what time did you first board the vessel, Mr. Johanson?      A. At 4:00 p.m.

Q. I see, and did you relieve somebody at that time?      A. Yes; I did.

Q. And when was your watch to run until?

A. From 4:00 to 12:00.

Q. From 4:00 to 12:00 midnight?      A. Yes.

Q. I see. Now, were there any specific duties which were assigned to you?

A. Well, my duty is the gangway watch; then, of course, if anything comes up like a fire—if we see any fire or anything like that, we are to report it, of course, to the Fire Department.

Q. I see. Now, when you speak of gangway

Respondent's Exhibit No. 23—(Continued)

(Testimony of Carl L. Johanson.)

watch, does that mean that you obtain the identity of people boarding and leaving the vessel?

A. Yes.

Q. And do you search packages and that sort of thing?

A. Well, no—unless a thing that is suspicious—the sailors come aboard, you know, with little packages, of course, we never question that, no. [279]

Q. And what form of identity do you normally require of people boarding the vessel?

A. Well, unless they have business on the boat, they are not employees, longshoremen or workers, or members of the crew, or longshoremen, they have to have a pass from Mr. Radovich, the Port Superintendent. That is at the Luckenbach Dock.

Q. I see, and do you require that they produce this pass?

A. Yes; unless they are officials that I know (interrupted)—

Q. That you recognize?

A. Of course, like Mr. Piper or anyone like that, of course, then I just don't question them at all.

Q. Now, from 4:00 o'clock on, did you spend all of your time right at the gangway?

A. Oh, yes. Well, I was walking back and forth in front there—might have been a few feet on one side or few feet on the other.

Q. Yes, but on board the vessel itself?

A. Yes; yes.



Respondent's Exhibit No. 23—(Continued)  
(Testimony of Carl L. Johanson.)

Q. I see. And was there a lot of passage of people back and forth over the gangway?

A. Oh, yes; there is always a lot of longshoremen and the Albina workers and the crew on the boat and the Luckenbach officials and the checkers keep on running back and forth all the time and the walking bosses and so on. [280]

Q. Do you keep any record of people boarding or leaving—like a log book or check on or check off system?

A. Oh, heavens, no, that wouldn't be possible. You would just run back and forth all the time.

Q. Now, approximately what time if you recall did the longshoremen knock off?

A. At—from the hatch—from hatch 4 and 5, they covered the hatches up and they got through, it was, oh, approximately ten minutes before 6:00—eight or ten minutes before 6:00 when they got all through and went ashore.

Q. And how about the men from the forward hatches?

A. Oh, well, they didn't leave until 6:00 o'clock.

Q. They didn't leave until, say, about five or ten minutes after the other group aft?

A. Yes.

Q. I see. Do you know offhand approximately how many men were in the group that had been on numbers 4 and 5 hatches?

A. Oh, no; no, no, we never (interrupted)——

## Respondent's Exhibit No. 23—(Continued)

(Testimony of Carl L. Johanson.)

Q. Well, what I am getting at is, were there twenty men or five men or fifty?

A. Oh, probably around twenty, I would say.

Q. Around twenty?           A. Yes.

Q. I see. And you stated that before they left, they covered up the hatches? [281]           A. Yes.

Q. Now, did they completely cover over four and five?

A. No; number four was completely covered but number five, to tell you the truth, I didn't go back there to look, because it really isn't any of my business.

Q. I see.

A. I think—of course—I think that they left the opening there for the welders to get down, you see, when the Albina welders came to work.

Q. I see. Well, now, what made you think that they left it open? Did you think that they had left it open at that time or you just think so now?

A. Well, I think so at that time and I still think so because although I actually didn't see the welders going down in the hatch, I understood they were there.

Q. I see.           A. Yes.

Q. And now, speaking of these welders, when did they come aboard?

A. They came aboard just around about 6:00 o'clock.

Q. About 6:00?           A. Yes.

Q. Was this before or after the longshoremen from number 4 and 5 had left the ship?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Carl L. Johanson.)

A. Oh, that was after. [282]

Q. That was after? A. Yes.

Q. And how many welders were there altogether?

A. I think there were two welders and their boss—their foreman. It was Mr. Lester—Lester Smith.

Q. Do you know him personally or from previous occasions? A. Well, yes; yes.

Q. How did you recognize these men as being welders?

A. Oh, that's easy, because they have their hoods, you know, that they put over their head when they weld, you know, and they carry that always under their arms so that we can always tell.

Q. I see. And did they furnish any identity to you when they came aboard?

A. Oh, no, no. We never question the Albina workers.

Q. I see. You recognize them as being Albina workers? A. Yes; yes.

Q. And then you let them pass aboard?

A. Oh, yes; yes.

Q. And do you know whether Mr. Radovich was aboard at this time? A. He was.

Q. Had he boarded just previous to that, or (interrupted)——

A. I don't remember exactly how long before he came aboard. Of course, he runs back and forth all the time, too, so I [283] never pay any particu-

Respondent's Exhibit No. 23—(Continued)

(Testimony of Carl L. Johanson.)

lar attention to the time, you see, when he comes and goes.

Q. Now, when these welders came aboard, other than their helmets, did they have any other equipment with them?

A. Yes; they had one of these trucks, you know, where they had a lot of hoses and things on that they parked on the dock right in front of hatch number 4.

Q. They parked it there, you say?

A. Yes; yes, right on the dock there and Mr. Smith, the foreman, he was running back and forth all the time and I—connecting up the hoses, I guess or whatever there was, and I didn't pay particular attention to just exactly what he was doing.

Q. Did this appear to be an electric generator—welding generator?

A. I don't know—I don't know what it is.

Q. But you saw some equipment on a dollie, was it, on wheels?

A. Well, a kind of—yes, quite a big truck, about as big as from here over to the wall there.

Q. Indicating a distance of approximately eight feet—ten feet?      A. The length of the truck?

Q. Yes.

A. Yes. About maybe eight feet, something like that.

Q. I see. And then, these welders, they came aboard and what [284] did they do then? Did they go aft?      A. They went aft, yes.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Carl L. Johanson.)

Q. I see. And then how long after that was it before you were aware there was a fire aboard?

A. Well, I—Mr. Radovich came by me. It was shortly after 6:00 o'clock—shortly after the welders got there and he went back to the rear end of the boat and to hatch, I guess, number 5 and all at once I noticed him coming running full speed and ran upstairs to the officers and he didn't say anything to me at that time, but just a second and he come down again and he said there was fire on the boat, and I noticed the crew came out and there was quite a commotion and I—he was running ashore and I hollered to him, "Do you want me to call the Fire Department," and, of course, I knew he would, so I wasn't quite sure whether he said no or yes, but I knew that is what he was running ashore for, and so it was only about—that was about 6:15—approximately 6:15, and then it was about fifteen minutes later before the Fire Department got there.

Q. Fifteen minutes later?

A. I would think—about twelve or fifteen minutes.

Q. You didn't happen to keep any record of the times on this, did you, by any chance?

A. Well, approximately. Not to the minute, you know—we never have to the minute, but approximately, I think I wrote [285] it down in my log as 6:30.

Q. What do you use for keeping track of the

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Carl L. Johanson.)

times? Do you carry your own watch or do you use the ship's clock?

A. No; I carry my own watch.

Q. Carry your own watch? A. Yes.

Q. And it's fairly accurate, is it?

A. Oh, yes; yes.

Q. And you judge it was about 6:15 that Mr. Radovich ran ashore?

A. Went down—yes, to call the firemen.

Q. And between the time that Mr. Radovich ran past you and went topside to, as you felt, to see the officers (interrupted)— A. Yes.

Q. —and the time he came down and crossed the gangway and reported fire, had you observed any smoke or suspected any fire?

A. No, no, no; I hadn't observed. I understood he just stuck his head down there in the hatch and he could smell smoke.

Q. I see.

A. And I couldn't see any smoke until quite awhile after he had left.

Q. I see. Now, did you do anything or did you just remain at the gangway? [286]

A. No; I had to remain at the watch—at the gangway, you see; that's my job.

Q. I see, and you feel it was approximately fifteen minutes after Mr. Radovich went ashore that the firemen came? A. Yes.

Q. And this consisted of fire trucks, did it, and a group of men?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Carl L. Johanson.)

A. Yes. Of course, I could only see one fire truck on the dock, you know. The rest of the fire trucks were parked out in the street—I was at the dock, so how many were there I don't know.

Q. I see. Now, at any time did you hear the ship's fire alarm sound?

A. Yes. Well, now, I couldn't swear to it, but I am almost positive that I heard the alarm.

Q. Do you recall just when this was?

A. Well, right after Mr. Radovich got up there to report to the officers.

Q. I see; I see. Now, between the time Mr. Radovich went ashore to—presumably to telephone for the Fire Department and up until the time the Fire Department arrived, did you observe any activity or action on the part of the ship's force?

A. Oh, yes; there was lots of the crew came there and I—I suppose that they were connecting up the hose. Now, I couldn't say what they were doing because I was just standing [287] by the gangway watch, you see, I didn't want to have anybody come on the ship, you know, especially during all the commotion, so the mates were there and quite a few of the crew and I know they were running between the hatch and over to the bridge.

Q. I see.

A. But what they were doing at the hatch, I don't know, because I didn't go over there.

Q. Did you notice when the welders or if the

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Carl L. Johanson.)

welders rigged the wires or hoses as you referred to them and brought them aboard the ship?

A. When, you say?

Q. Yes; did you observe when they did it?

A. Well, no; I really didn't, because this—the foreman, Lester Smith, I guess who was doing the connecting, was just running constantly back and forth there and, of course, I know him so well that I just—I just didn't pay any attention to really what he was doing.

Q. Now, had you at any time prior to the arrival of Mr. Smith and the welders, had you been advised that welders would be aboard the ship?

A. I—if I recollect right, welders were aboard forward on the boat at the time I came on, working, doing some work there. So I know that—I knew that the Albina workers were on the ship, that (interrupted)— [288]

Q. That there were welders aboard?

A. Yes, but that these particular welders that was coming to hatch 4 or 5, I wasn't informed anything about them.

Q. Now, that was a different group, though, was it not, from those that had been welding forward?

A. Well, yes, of course, Mr. Smith, I think, the foreman, he was the foreman for all of them, but during this time when the two welders came there at 6:00 o'clock, he was with them there constantly, just running back and forth there.

Q. I see.



Respondent's Exhibit No. 23—(Continued)  
(Testimony of Carl L. Johanson.)

A. But I think that he is the foreman for all the welders on the boat.

Q. Mr. Smith?

A. Yes, Lester Smith. And there is another Smith there. He is also a foreman. I think he is under the other—the Lester Smith.

Q. I see. Now, did you have occasion to report the fire to your superiors?

A. Well, Mr. Radovich is my superior and, of course, he was right there all the time so, of course, I didn't have to make any report because he knew all about it.

Q. I see.

A. I just made out a report afterwards—a fairly complete report and sent to Mr. Cruikshank (phonetic), my manager at the Burns [289] Detective.

Q. That report indicated that a fire had occurred aboard the vessel?

A. Yes; yes.

Q. So actually you didn't take any part in the extinguishment of the fire?

A. Oh, no; no, no, no.

Q. And were you still aboard up until midnight, your scheduled time to leave?

A. Yes. Yes.

Q. And do you recall the Chief Mate returning aboard while you were on watch?

A. Yes; the Chief Mate—I know the Captain came aboard 10:00 o'clock.

Q. He returned at 10:00?

A. Yes, and I think the Chief Mate and the

Respondent's Exhibit No. 23—(Continued)

(Testimony of Carl L. Johanson.)

Chief Engineer, if I recollect right, they didn't come until later.

Q. But you were still on board when they came back?

A. Yes; I was aboard until 12:00 o'clock.

Q. And you saw the Chief Engineer and Chief Mate return before you went off watch?

A. I have it written in my log. I think it was before I (interrupted)—

Q. Do you have that log with you now?

A. No; I haven't. I have it in my—no, I don't have it in my car because we turn it over to the next one that relieves [290] us, you know. We turn all the records over to him.

Q. I see. You are not sure at this time but you think that the Chief Mate and Chief Engineer returned before you went off watch?

A. Yes; I am almost positive they did.

Q. And the Master definitely came back at 10:00 p.m.?

A. Yes; yes.

Q. Did you make any report to any of those gentlemen when they returned?

A. Well, I just told the Captain. I said, "You missed lots of excitement here," and he says, "What is it?" "Oh," I said, "there has been a fire in the hold." And he went over right away. He didn't ask me any more questions and I didn't talk any more to him about the fire.

Q. I wonder if you could estimate for me, according to your own recollection, approximately

Respondent's Exhibit No. 23—(Continued)

(Testimony of Carl L. Johanson.)

how much time elapsed between the time that Mr. Radovich left the gangway presumably to call the Fire Department—from that moment until the moment that the Fire Department had water at the scene of the fire?

A. That was approximately fifteen minutes.

Q. Approximately fifteen minutes?

A. Yes.

Q. Now, do you have any further knowledge of information relative to this casualty, Mr. Johanson, that you feel would prove pertinent to this investigation that I haven't already [291] brought out by questioning?      A. Any casualty?

Q. Any further knowledge relative to the incidents of this casualty—of this fire (interrupted)—

A. Oh, no, just (interrupted)—

Q. —that I haven't already gotten by questioning?

A. I heard just a lot of gossip and talk around there and, of course, there, I don't pay much attention to it.

Q. Did you observe the welders when they later left?      A. When they left?

Q. Yes.

A. No; there was such a commotion there and I was so busy trying to keep the photographers and the pressmen off of the ship that I—I had my hands full.

Q. Did you have orders to do this?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Carl L. Johanson.)

A. Oh, yes; I did.

Q. Who gave you those orders?

A. Mr. Radovich and Mr. Piper. I didn't tell them they couldn't get onto the dock. The papers said that I stopped them coming on the dock, too, but that wasn't so. I just told them to stay off of the ship. I didn't say anything about the dock.

Q. Do you have anything further that you would like to add, Mr. Johanson?

A. No; I don't think I have. [292]

Lt. Cmdr. Mason: Very well, sir. I believe that will be all. I want to thank you very much for coming down here.

A. You are welcome.

(Witness excused.)

Mr. Wood: Well, 9:00 o'clock tomorrow morning?

Lt. Cmdr. Mason: 9:00 o'clock tomorrow morning.

(Whereupon, at 1:25 o'clock p.m., the preliminary investigation adjourned.) [293]

#### Fourth Day—Morning Session

(The preliminary investigation reconvened at 9:07 o'clock a.m., Tuesday, April 8, 1958.)

Respondent's Exhibit No. 23—(Continued)

KENNETH W. POST

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

Examination

By Lt. Cmdr. Mason:

Q. Would you please state your full name and mailing address, sir?

A. Kenneth W. Post, 5908 Southwest Nebraska Street, Portland, Oregon.

Q. And as I understand it, Mr. Post, you are connected with the Portland Fire Department; is that correct, sir?

A. Yes; I am Assistant Chief.

Q. You are the Assistant Chief. Do you have a rank designation? In other words, would that be "Captain" rank or (interrupted)—

A. No; it's Assistant Chief; that's my rank.

Q. I see. And how long have you been employed with the Portland Fire Department?

A. Thirty-four years.

Q. And how long have you held the post of Assistant Chief? [296]

A. A year.

Q. One year? A. One year.

Q. Did you serve on any other fire department prior to your service with the Portland Fire Department? A. No; I didn't.

Q. And, Chief, what is your background of training in this field?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Kenneth W. Post.)

A. Well, we all come up through the ranks. I started as a fire fighter, then a Lieutenant, Captain, District Chief and then Assistant Chief, and it's all—in our department—it's all Civil Service—by examination.

Q. Are there any specific schools that you've attended relative to the type of duties you perform, such as in fire fighting?

A. Oh, yes; we have schools all the time, and I at one time went through four years of a college we had here in the department, then we have schools all the time.

Q. I see. And during your career with the Portland Fire Department, have you had any previous experience with shipboard fires?

A. Yes. I was to the—one I can think of—just at the start of the war, we had a fire on the—I can't think of the name of the ship, but anyway, it was being overhauled by the Willamette Iron and Steel and converted into a—some kind of [297] a Navy ship. We had a fire on that one. We had a fire on a carrier that they were dismantling at the shipyard up here (interrupted)—

Q. Did any of these fires involve cargo?

A. No; I believe not; not that I can remember.

Q. In other words, then, would it be safe to assume that prior to 2 April, you have had no experience with the extinguishment of cargo fires aboard merchant vessels?

A. Not that I can recall.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Kenneth W. Post.)

Q. I see. Now, as I understand it, on 2 April, you proceeded in connection with a fire that occurred on board the S.S. Robert Luckenbach at the Luckenbach Terminal in Portland, is that correct, sir?

A. That's right.

Q. When did you first receive word of fire on that vessel?

A. Well, when the alarm came in, which was at 6:20 p.m., it was transmitted to the engine house—the alarm—and normally I don't take a fire like that, but one of my duties is—I have charge of the whole city the day I'm on, and it sounded like it might be a serious fire, so I took it; I answered over there, and I arrived there about the same time as the District Chief arrived. Now, you see (interrupted)——

Q. And who is the District Chief, sir?

A. That's Roth.

Q. Is that the gentleman that appeared with you today? [298]

A. That's right.

Q. Do you know approximately what time you arrived at the scene?

A. Well, I imagine it takes about four minutes to get over there.

Q. So that would be about 6:24 that you (interrupted)——

A. That would be close; it might be a minute either way.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

Q. And what equipment did you take with you, sir?

A. What answered on the first alarm over there is three engine companies, a fire boat, and a truck—ladder truck. That's the assignment down there on a first alarm.

Q. I see. And can you tell me approximately how long after you arrived at the scene that water was directed on the fire?

A. I imagine the first water got in there—would be three minutes. That would be plenty long enough—about three minutes.

Q. Three minutes after your arrival?

A. Yes.

Q. Which would be approximately seven minutes in all, from the time that you first received the alarm?      A. That would be about right.

Q. Now, I'll ask you, Chief, if you would just describe in your own words, what you saw and what occurred starting from your first arrival at the Luckenbach Terminal.

A. Well, of course, naturally the first thing I did was to [299] proceed to the ship to see what was on fire, and when I got there, the fire was in an after hatch, and there was quite a little fire in the hatch. Now the hatch was practically covered except for two—I don't know what your name for them (interrupted)—

Q. Pontoons, I believe.

A. The pontoons were open in the forward end



Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

of it, and the after end, I believe there were three pontoons off. The rest of the hatch was covered.

Q. There was a canvas tarpaulin also over it?

A. There was a canvas tarpaulin over the top, that's right.

Q. I see; sort of a tent arrangement.

A. That's right. So immediately I looked down in there to see what it was and ordered the lines to cut it off from the top if we could see (interrupted)——

Q. Before we proceed, what did you see, smoke or fire or both?      A. Smoke and fire.

Q. You did see both?      A. Yes.

Q. And with respect to the fire itself, did it appear to be concentrated on any one particular part or place?

A. Yes, it did. It was from the hatch part forward, up towards the next bulkhead, and the fire eventually turned out—that's where all the fire was. [300]

Q. And was it spread on both sides of the vessel—that is, port to starboard, or was it just (interrupted)——

A. No, mostly on the port side of it.

Q. The in-board side; the side to the pier?

A. The side next to the pier; then it got out about as far as where the center ladder goes down.

Q. Now, when you first appeared at the scene of the hatch, did you observe any ship's fire hoses strung out?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

A. No, I didn't. I didn't look for any, and they may have been there, but I didn't see them—they could have been there.

Q. I see. Did you see any activity going on? Were there any other crew members or anyone present at the scene that you observed?

A. Yes, I contacted the Captain pretty—very little time. That's one of the things you want to do—is to try to find out what was burning and what the cargo was and if there's any other way to get down there besides the hatch. I contacted him pretty early.

Q. Now, merely for the record, Chief, and I don't mean to try to trip you up on this at all, but it's my understanding that the Captain, himself, was not aboard at this time. Now is it possible that the person you contacted might have been the Watch Officer? I mean did you make any inquiry as to the specific identity of the person you contacted?

A. No, I didn't. I was looking for a ship's officer, and (interrupted)— [301]

Q. You did contact who you assumed to have been the Captain?

A. Yes. It might have been the First Mate; I don't know.

Q. I see. Well, that's all right, sir. Now, if you'd proceed.

A. Well, then I could see that we wasn't getting anything past there, so we immediately put lines down there to cut it off, and ordered circulators, and

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

circulators are what we call—we put them in and they just whirl at the end this way (indicating) and lowered them down. We put two and finally put a third one down there in the hold.

Q. Is this a connection that you make at the end of the hose?

A. At the end of the hose, yes; it's not like a straight nozzle.

Q. What do they actually do; do they throw out a fog arrangement or a spray?

A. Spray arrangement. They call them a "Bresden Nozzle"—is the name for them, and then I know that I must have contacted one of the ship's officers. I don't know whether it was the Captain or the First Mate, but I asked him to remove this canvas because it wasn't allowing the smoke to get out of there properly. After that was over, to see that the lines were on. You see, all of these companies, they report to me always, and where they want lines and so forth, and had them standing around there, and then—I don't know what the time is or anything—I had them remove these pontoons. As soon as we [302] removed the pontoons, then we was able to start the lines to going down into the ship. Of course, I wouldn't allow anybody to go down there unless they had a self-contained mask on. There's always the danger in the bottom of a ship of an oxygen deficiency and men get knocked out, so I had the men pull these pontoons up and everything—now, who did that—I

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

believe it was the ship's crew; I don't know who did it.

Q. In either event, it was someone aboard the ship there, at the scene at the time?

A. Yes, and I'm sure—I thought it was the Captain I was talking to at that time. I'd know him if I saw him—the fellow I talked to. Well, then it was just a matter of salvage work from there on. We put the fire out very quickly, and (interrupted)—

Q. How many hoses did you put down into the hold? A. Besides these "Bresdens"?

Q. Yes. There were two "Bresden" as I understand it.

A. That's right. Let's see—oh, I think about seven.

Q. Now, up to this time, no one had gone down into the hold as far as your crew was concerned?

A. No, not as far as our crew; not until these pontoons were removed.

Q. Did you observe anyone come out of the hold from the time you first arrived at the scene?

A. No. [303]

Q. Do you know whether anyone had been down in there when you first arrived?

A. No, but I—now, also, by the way, I heard these welders, and I heard them talking—what they was doing—that's how I had an idea on how that fire started. I heard them talking. Who they was talking to, I don't know—there was two welders standing there.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

Q. They were up on deck?

A. They were up on the main deck.

Q. No one down in the hold? A. No, no.

Q. And approximately how long would you say it was before you felt the flames to be extinguished?

A. Well, I haven't got that time, but I—— (interrupted).

Q. Well, if you could just—— (interrupted).

A. Oh, I would roughly say an hour.

Q. About an hour?

A. It's pretty hard to determine time, because we don't look at time, you know.

Q. Were you running water during all this time, do you know?

A. Oh, yes; to these circulators.

Q. I see.

A. And there was a couple of other lines, that whenever they could see the flames, they would shoot down, but the flame was being held back under this second deck. [304]

Q. I see.

A. It was only holding; it wasn't extinguishing too much—just holding it in check.

Q. Did anyone speak to you relative to pumping out the water as it went in, or did you talk to anyone?

A. No, but I looked the ship over and it was pretty near empty and there was no danger for a long time of putting too much water into it. I also ordered a line into the hatch ahead of that because

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

the bulkhead there was getting hot, and practically caught some of the duffel afire up against that bulkhead.

Q. Did you also have apply water into the hold forward of that?

A. Yes, I had a—what we call inch and a half—a small line, and they did extinguish where it started in that duffel a little bit.

Q. I see. Did you make any inquiry while you were aboard as to why no positive of extinguishment had been carried out prior to your arrival?

A. No, I didn't.

Q. Were you aware of the fact, or were you made aware of the fact that the ship's fire main system was inoperative?

A. No, I never knew whether it was or it wasn't; I never inquired. I always understood that they had a—most of these ships have a CO<sub>2</sub> [305] arrangement.

Q. Had anyone mentioned the CO<sub>2</sub> arrangement to you on this particular occasion?

A. No, but I figured it wasn't working, or they'd have had it going before we got there.

Q. I see, but no actual discussion was made concerning this?

A. No, I never made any discussion.

Q. Now, approximately an hour, you stated, to extinguish the fire; after which, did you leave, and leave the matter then in charge of— (interrupted).

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

A. Oh, I imagine about half an hour later, I was seeing that the salvage operations were starting and we'd talked to—now, that's why I think it was the Captain—talked to him and asked him about getting somebody to move that cargo that was down there. We couldn't put it out on the dock. Well, they said they'd get hold of some stevedores and a barge and put it out into this barge. The salvage operation was this; we had a stack of burned stuff here (indicating) and over here was some paper, and you had this hole in between which was full of water.

Q. Now, when you say "here" and "here," does that mean forward and aft?

A. Well, the paper was aft, and where the fire was was forward of that, and between there was a space, and I imagine there was about four or five feet of water there. Well, they started to pull the top off and put it down [306] in there, and as soon as they got down there, they found out the fire ate way down in, clear to the water line, in the back. Then it had to be removed to get all the fire out in there—smouldering fire.

Q. And you stated that you stayed about another half hour to oversee this operation. Did any of your own men go down into the hold to assist on this, or was that— (interrupted).

A. Oh, yes; they were all—the regular crews were down in there.

Q. They were.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

A. While I was there, there wasn't anybody but firemen in the hold.

Q. I see.           A. At any time.

Q. I see. How soon after your arrival and application of water, did your crew go down into the hold?

A. Well, that's what I said might have been an hour; I don't know—as soon as they got the pontoons out, we went right down.

Q. Approximately how many men, or do you know exactly how many men that you had?

A. That went down at that time?

Q. No, that you had—that reported to the fire.

A. Well, you see, about—oh, I imagine it was ten minutes after I looked around good, I put in what we call a "Third [307] Alarm," and a Third Alarm in that case calls for three more fire engines—on a second is two—five—five more engines, another fire boat and another truck, and of course, a few auxiliaries go with it, such as tenders, squad wagon, and a compressor, but the main thing is we get five more engines and a fire boat.

Q. Did they all come?

A. Oh, yes; they all came. Now, we—I had about three companies standing by that never did any work or anything, but we always like to have a little insurance there in case it gets away from us.

Q. I see.

A. A little more than we figured.



Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

Q. Was the fire boat at the scene when you arrived, or did they arrive later?

A. I think they must have arrived—that I don't know, whether they arrived first or not, because when they arrived, then they came up and reported.

Q. I see, and did they rig hoses, also?

A. No.

Q. They did not?

A. As far as I know they didn't. Now, the first boat, I told them to stand by and not to put in any hoses.

Q. Now, were you still aboard while some of the cargo was actually removed from the hold? [308]

A. No; no, I had left before they had removed any cargo. Chief Roth stayed there pretty near all night on it.

Q. Now, would it be safe to assume then, that the initial fire was under control and pretty much extinguished by 7:27 or 7:30?

A. Oh, yes; yes—I think so—within ten minutes after the hatch covers—the pontoons were pulled out—it was under control.

Q. I see. Have you since been back aboard the ship yourself for anything?

A. No, I haven't.

Q. You have not?

A. The other Chief has.

Q. Did you make any examination of the hold yourself, before you left the vessel?

A. Well, yes; I was down in there.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

Q. You did go down into—— (interrupted).

A. Oh, yes; I was down in there; sure.

Q. Did you notice the nature of the cargo?

A. Well, to me, it appeared to be mostly paper stuff. I even saw some mops—string mops—down in there, too. It looked like school supplies down in there and everything else; I don't know what it was down in there. It was pretty much junk when I saw it.

Q. Do your duties or your responsibilities as Assistant Fire [309] Chief require that you make any investigation relative to the cause of the fire?

A. No, no. The District Chief does that.

Q. I see.

A. And if he can't determine it or anything, then he calls one of our investigators; we have regular fire investigators we call.

Q. I see. Do you know whether this was done in this case?

A. Well, I know the District Chief probably inquired around, because he has to make a report on it. I don't have his report with me.

Q. I see. What is the District Chief's name?

A. Roth.

Q. Oh, that is Mr. Roth?

A. Yes, who's with me.

Q. Fine; thank you.

A. We call them District Chief or Battalion Chief.

Q. I see.

A. The Battalion Chief of a district.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

Q. Now, when you arrived at the scene and observed the situation, you stated that you immediately brought hoses into the scene to apply water. Did the situation appear to you such that immediate water was essential to the extinguishment of this particular type of fire?

A. Yes, you have to put water on it to put it out, if you [310] don't have anything else there to put it out with. We don't know what's in these holds or anything—altogether what's down there, so we have to control it as fast as we can, to hold it back. We could see this other pile of paper over there once in a while, whenever smoke would blow back. You knew there was more there.

Q. I see. Now, in your experience in fighting fires—combating fires—have you not found that earliest application of fire fighting methods to a fire is normally the most effective?      A. Oh, yes.

Q. Such as minimizing damage?

A. Yes, you can put a fire out with a bucket, usually, if you can get to them to start with.

Q. So, in other words, in this particular case, had water been able to be applied even earlier than your arrival, you feel that the extent of the fire would have been lessened considerably?

A. Yes. I don't know how the fire started, but it couldn't have started very big—you could put it out with pretty near anything. Surely a small hose line would have put it out when it started. That wasn't of a nature that it just started spon-

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

taneously all over. We consider that a delayed alarm in our department.

Q. A delayed alarm?

A. Yes; we didn't get a call right away on it—the minute the [311] fire started—we didn't get a call on it.

Q. I wonder if you could maybe clarify that a little. I'm not sure—— (interrupted).

A. Well, in this way; that there was men working—you take and assume that men was working there—and discovered the fire. If they had called the Fire Department right away, we'd have been down there in a short time, and it wouldn't have gained so much headway. Fires don't—they don't start that fast.

Q. As I understand it now, you had first water at the scene within approximately seven minutes from the time you received the alarm, which is—— (interrupted).

A. I imagine that's pretty close.

Q. That strikes me as rather fast and rapid service, also.

A. Yes, but it wasn't directed onto all the fire, you see, from the top down. It's quite a ways down into the hold of the ship, and you shoot at an angle like this (indicating) down in there. That isn't a proper application, but it's all we could do at the time. Proper application would have been down close, where you can put it directly on all the fire. We was only hitting part of the fire and holding

Respondent's Exhibit No. 23—(Continued)

(Testimony of Kenneth W. Post.)

it in check, and that's what these "Bresden" nozzles did a little later. We put them down to keep it from spreading.

Q. Now, as I understand, no one, at any time, advised you of the fact that the ship's fire main system had been inoperative. [312]

A. No, I never made inquiry into that.

Q. Have you been questioned, or given any testimony prior to this time, relative to this casualty?

A. You mean about this particular fire?

Q. Yes. A. Oh, no; no.

Q. And you state if there is, or has been any investigation made relative to the fire, that Mr. Roth would have been the gentleman who would have handled it?

A. Yes, that's right. We usually make our investigations after the fires are out.

Q. Yes. Did you receive full cooperation and assistance from the ship's force?

A. Yes, I did. Everything I asked for, they did it.

Q. I see.

A. Like removing these—first I removed this hatch cover, or whatever you call it—for the wind break—and that wasn't sufficient. Maybe it was three or four minutes—maybe five minutes—later, I asked him to remove the pontoons, and they did it right away.

Q. Were you hampered by anyone during the period you were combating the fire?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Kenneth W. Post.)

A. Not a bit.

Q. Have you, since the fire, received any report, either official or otherwise, relative to the cause of the fire? [313]

A. No—well, the Department has, I imagine. The Fire Marshal's Office keeps a record of these, and you could get your information from that for the investigation part of it.

Q. Now, when you left the vessel, was Mr. Roth—he remained at the scene? A. Yes.

Q. And did he retain a large group of Fire Department personnel with him?

A. Oh, yes; when I sent the recall in, I sent everybody back but the first alarm assignment, so he had the first alarm assignment there, which was three engines, and I think he kept the next truck—three engines, two trucks and a fire boat was retained there. Now, how long he kept them there, I don't know.

Q. Now, Chief, understanding that this is an official government investigation inquiring into the facts surrounding this particular casualty, is there anything further that you feel might prove pertinent to this investigation, or anything you'd care to add at all that hasn't been brought out, now, by my questioning?

A. No, not that I know of, because I don't know what the investigation is about to start with. There was a fire and that's the part that you're trying to find out from me.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Kenneth W. Post.)

Q. That's right. The investigation, primarily, is to ascertain the facts surrounding the casualty in order to establish the cause, any violations that may have been involved, [314] or any negligence on the part of any persons.

A. Well, I wouldn't know; it would be just rumor what you'd hear.

Q. Well, that of course, we don't want.

A. That wouldn't count.

Q. There is nothing further, then, that you'd care to add?

A. Not that I can think of at this time.

Lt. Cmdr. Mason: Very well, I want to thank you very much for coming up here today.

(Witness excused.)

### CECIL F. ROTH

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

#### Examined

By Lt. Cmdr. Mason

Q. Please state your full name and mailing address, sir.

A. Cecil F. Roth, 3964 Southeast Boise Street, Portland 2.

Q. Is that R-o-t-h, or R-o-t-h-e?

A. R-o-t-h.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

Q. And how are you presently employed, Mr. Roth?      A. By the Portland Bureau of Fire.

Q. And what is your particular designation with that bureau?      A. A Battalion Chief.

Q. And how long have you been in that capacity, sir?

A. I've been in that capacity for eleven [315] months.

Q. And how long have you been active in the Portland Fire Department?

A. Just over nineteen years.

Q. And did you have any affiliation with any other fire department prior to that time?

A. Not prior to that time, no.

Q. And during your career with the fire department, what has been your experience—the extent of your experience?

A. Well, my experience within the Bureau has been somewhat general. I've served on every type of apparatus that the Portland Fire Department has, and I spent three years in the fire fighting division of the Navy, also, as an enlisted man.

Q. When was that, sir?

A. That was between 1942 and '45.

Q. Were you—did you attend any of the Navy fire fighting schools?

A. I was an instructor at Manchester.

Q. I see.

A. A temporary instructor, I might add; I was not assigned there; I was temporarily detached from



Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

Naval Air Station, Pasco, as instructor at Manchester Training School.

Q. I see. Now, during your career in combating fires, have you had any experience with respect to shipboard fires?

A. I believe this is the third shipboard fire to which I have reported. [316]

Q. Now, when you say "this," you are speaking of the Robert Luckenbach fire, which occurred on 2 April?      A. Yes.

Q. I see, and the two previous fires—what type of fires were they? Were they cargo, or— (interrupted).

A. One was at the drydock when I was a fire fighter assigned to Engine 36, and it was a fire in the hold, and the other one was a fire in the crew's quarters, I believe, in a Navy or Army transport. It was docked at the foot of Stark Street, about 1946 or '47.

Q. I see. Now, when did you receive your first knowledge that the fire was in progress on board the Robert Luckenbach?

A. Well, I was at my Battalion Quarters at Engine 24.

Q. Where is that located?

A. That is located at North Interstate and Wilamette Boulevard, and we have an intercom system—or loudspeaker—that is piped into all stations from our central alarm headquarters, and they announced, in connection with the alarm box, that the

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

fire was aboard the Robert Luckenbach at Luckenbach Terminal.

Q. And do you know what time this was?

A. I happen to remember that it was at 6:20—1820.

Q. On 2 April.

A. Well, I would have to do some recollecting.

Q. Well, that's all right, sir; the date of the fire has been [317] established as 2 April, so that's all right. And what did you do then, sir?

A. Well, I got into my car and I drove to the Luckenbach Terminal.

Q. And, I'll ask you in your own words, to simplify this, if you would just relate from that point on, what you saw and what you did.

A. All right. I was aware that Assistant Chief Post, who is my immediate superior, had also answered, because I saw him, so in fact, I believe that he got aboard ship a few seconds before myself, and there was smoke and intense heat coming out of the hold, and am I to understand that that is number four hold?

Q. Number five, sir.

A. Number five; number five hold, and the smoke and heat indicated that the fire probably was near the forward end of the hold. I conferred with Chief Post, and asked him what he wanted me to do. He told me to immediately see that a third alarm was sounded on the fire, which I did. After attending to that, I— (interrupted).

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

Q. How did you do this, sir?

A. Well, I contacted a man who was standing over on the pier, perhaps twenty feet from me—a man who I knew—and I told him to go to the closest fire department radio and sound a third alarm. So, after doing that, I reported back to Chief Post at the scene of the fire, and we—by that time, several companies [318] were playing hose lines in the direction of the fire as nearly as they could ascertain it. I say as near as they could ascertain, because there was dense smoke, and it was only by close observation that we could periodically see the flare of the flames. It was somewhat apparent that we weren't getting the fire sufficiently with the straight nozzle and so, also after conferring with Chief Post, we considered it advisable to lower what we call the "Bresden Distributors," which throws a coarse spray at about a thirty foot diameter—fifteen foot radius.

Q. How many hoses were in the hold at this time?

A. At the time we ordered the Bresdens?

Q. The Bresdens.

A. I would say we had two or possibly three hose lines operating in the hold at that time, although it is difficult to say with any certainty exactly, but I would say two to three.

Q. I see. Then, were the hoses equipped with standard nozzle, or did they have that deflection type?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Cecil F. Roth.)

A. Most of our nozzles are equipped with the—so that the men can select either fog or straight stream, and in this case, we had—I think all the nozzles that were there, were so equipped, and I recall having the men change to straight stream, in order to get the range, because when I was able to see, I could see the fire was at some depth and there was quite a little reach into it. [319]

Q. Forward? A. Yes.

Q. The forward part of the hold?

A. Yes, yes.

Q. All right, sir, if you will continue.

A. Well, then, after we decided to make use of the Bresdens, as the companies reported, I would ask them if they had Bresdens as part of their equipment. Some of our companies are equipped and some are not—with Bresdens—and since we were getting companies in from some distance—companies with which I was not too familiar, I was asking whether or not they carried the Bresden, and if they did, I'd tell them to bring it up and put it in operation, and in some cases—at one time we had at least one extra Bresden there, and I directed the company to lay in a line and attach that Bresden and to operate it. Of course, we observed the progress, and I cautioned the officers to observe as closely as they could, to make every attempt to get these Bresdens at the proper level. Some minutes later, perhaps fifteen or twenty, I conferred

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

with Chief Post again, and we decided that we had better lift the hatch covers, which we made arrangements to have done. This necessitated shutting off some of these lines, because those things are pretty heavy, and there was a decided hazard there—there was some excitement on the part of the ship's crew and so on, and so we practically stood back and stood clear, and during that time, [320] for a few minutes, I would say that they probably shut down a couple of lines, because the men couldn't attend them, with the things swinging over their heads. After the hatch covers were removed, we were able to use some hand lines to a bit more advantage, because of the more advantageous angle we were able to assume, and the fire began cooling shortly after the hatch covers were lifted, and at that time we considered it expedient to equip two crews with self-contained masks and put them in the hold with hand lines. That roughly outlines the fire fighting operation.

Q. I see. Now, when you first arrived at the scene, do you know whether there was anyone down in the hold at that time?

A. Well, I would have every reason to believe that there was not. I don't think it was livable in the hold at that time.

Q. You, yourself, didn't observe anyone down there?      A. No; I did not; no.

Q. As I understand it, some water was also ap-

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Cecil F. Roth.)

plied to the after end of the hold forward of number five?

A. That is true. Somewhere early in the stages of the thing there, either Chief Post or myself—I've forgotten who. Some of these decisions were arrived at through conference, and some we arrived at independently, but at least a company was ordered down into that hold to protect what we call the "exposure," and they were in that hold at all times during the fire. In fact, they extinguished a couple of spot fires down [321] there.

Q. I see. Now you stated that you received the first information of the fire at 6:20 p.m., or 1820. Do you have any recollection of what time you arrived at the scene?

A. I could only estimate that it would probably take me three minutes to drive it—three or four minutes.

Q. There was no water being applied upon your first arrival, was there?

A. Not to my knowledge.

Q. In either event, the fire department was not applying any water at this time?

A. Right; that's right.

Q. And approximately how long after your arrival, would you say it was, before water was applied—first water?

A. Oh, I think that water was being directed within three minutes after our arrival.

Q. When you first arrived at the scene, did you

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

give any consideration to covering over the hatch in an effort to smother the fire?      A. No.

Q. Did anyone at the scene suggest the use of the CO<sub>2</sub> system, which we have since found the vessel to be equipped with?

A. No; no one suggested it, and I wouldn't have entertained had they suggested it.

Q. You would not. Why is that, sir? [322]

A. Well, the hatch was open, and the fire was well supplied with air, and I would say that fire would have gained in intensity for quite a few minutes after it had been covered had we used CO<sub>2</sub>, and CO<sub>2</sub> has no cooling action, and there was enough fire in evidence that cooling was definitely indicated, and I could only speculate as to how long you would have to keep that hatch closed with CO<sub>2</sub> in the hold, before the fire would be extinguished, but I would think that perhaps—well, I'd hesitate to say. I would be convinced that we would have fire in there after twenty-four hours.

Q. But, in either event, based on your own experience, you feel that the use of CO<sub>2</sub> at that particular stage of the fire would have proved futile?

A. Right.

Q. Now, can you estimate for me how long after first water was applied that the fire was extinguished?

A. Well, I think a matter of record is that we sounded the recall at 7:47, I believe. Now, we don't usually sound the recall at the first moment we

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

think the fire is out. I would say, as a practical matter, that the fire probably was considered under control fifteen or twenty minutes prior to that time.

Q. And, as I understand it, from your superior, Mr. Post, shortly thereafter, or about that time, he left the scene?

A. Yes; he left shortly after we returned the greater alarm [323] companies.

Q. I see, and you remained on board?

A. Yes.

Q. And, basically, was this for the purpose of shifting or removing cargo, to ascertain that there was no further fire?

A. Digging out the fire, that's right.

Q. And did you proceed with this?

A. Yes; I did.

Q. About how long were you there, would you say?

A. Well, I don't have all my reports in from this fire yet, but—and I haven't taken the trouble to check and see exactly what time I returned to quarters. That is a matter of record with the department, however, and would be easy to ascertain.

Q. I wonder if you could estimate for me approximately what time you left?

A. I think—let's see—I would say about a quarter to four.

Q. In the morning?

A. Three-forty-five, yes.



Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

Q. That's, I fully realize, an estimate of the time?      A. Yes.

Q. By this time, you had removed a portion of the cargo, had you, from the hold?

A. Yes, sir.

Q. And where did you stow this cargo that you removed?

A. It was placed on a steel barge that was brought up alongside [324] the vessel.

Q. Was this a fire department barge?

A. No, sir; it was not.

Q. Do you know how the arrangements were made for the barge to appear there?

A. I only know that I asked one of the Mates to make the arrangements for removal of the cargo, and that arrangement was made.

Q. I see. Was it your men, or was it ship's force, or longshoremen, do you know, that actually removed the cargo from the hold?

A. The fire department removed the cargo and placed into the baskets, and the longshoremen handled it from there.

Q. I see. Was this done with the winches?

A. Yes.

Q. Do you feel that you received full co-operation from all of the ship's force during all of your operations down there?

A. Very fine, I would say.

Q. Were you hampered by anyone at all?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Cecil F. Roth.)

A. No; not at all.

Q. And did you, personally, go down into the hold and examine the area yourself?

A. I did, before we secured, yes, sir.

Q. I see. Were there any particular findings that you observed down there? [325]

A. Well, the only observation that I made was that due to an opening in a—well, a partial division in the center of the ship—there was an opening there that allowed the fire to extend to both sides of this division, whereas I felt perhaps if it hadn't been for this opening, we would have only had fire in one corner of the hold. I don't recall any other finding that I considered significant.

Q. I see. Now, did you observe the cargo that was removed from the hold? A. Yes.

Q. And what was the nature of that cargo?

A. I would call it art paper in packages, along with several bales of burlap.

Q. Were they burlap bags, do you know?

A. I think they were. We removed them in bales however, but I think they were bags.

Q. Did you receive any information or report upon your initial arrival or at any time, which would indicate to you approximately how long the fire had been in progress before you were able to bring water to the scene?

A. I don't recall receiving any such information.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

Q. Now, as I understand it from Chief Post, if the fire department were to conduct an investigation relative to this fire, that you would be the one to handle such investigation?      A. Myself? [326]

Q. Yes.

A. Well, as the first Chief Officer assigned, I would perhaps have a part to play, but our Fire Marshal's Office does contain within it an investigating force, which would probably be more actively employed in the investigation than myself. I would probably act in any way I could to assist them, but I think the findings would be theirs.

Q. Do you know whether any such investigation has been or is being conducted?

A. I don't have any knowledge of it.

Q. Who specifically would I contact in the Fire Marshal's Office relative to any such investigation?

A. Well, the Fire Marshal's name is Dale F. Gilman. He is the Fire Marshal and he would be the man to direct such investigation.

Q. Is that G-i-l-l-m-a-n?      A. One "l," sir.

Q. Did you receive any report relative to the cause of this fire?      A. Yes.

Q. From whom did you receive this report?

A. I'm trying to recall, and I think it was from the—one of the Mates there was on deck.

Q. And what, specifically, did this report encompass?

A. Well, we were told the fire was caused from

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

sparks from a [327] welding operation on the ship's ladder in the forward end of the hold.

Q. Did you examine this scene, or the ladder, yourself?

A. I only ascertained that there was a rung missing down there.

Q. You didn't observe whether or not there was any signs of welding having been performed or started at that area, did you?

A. No, I did not, because quite early in the operation, the Mate insisted that we put on a little temporary arrangement that filled in this vacant space, and I passed it down and one of the men attached it, and it more or less covered up the thing, and I didn't make any observation of the ladder itself.

Q. Have you been down to the ship since you left the first time, as you stated, three-forty-five in the morning?

A. No, I have not.

Q. You have not again been down aboard. Have you been interviewed or interrogated since that time, by anyone relative to the casualty?

A. Not outside of our own department.

Q. Just your own department?

A. Yes, and I wouldn't say that took the form of interrogation; it was a discussion entered into as more of a—oh, an informal discussion of the fire as one working man to another, [328] you might say.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

Q. I see. Are you familiar with any ordinances that might have been violated?

A. No, sir, I am not.

Q. Have you been required to submit a written report with respect to the fire?

A. My written report should be in the hands of the Fire Marshal now, however, due to the other chores I've had, I don't have it in yet.

Q. I see. Does this written report contain anything pertinent that would be pertinent to this investigation being made by the government, that has not already been brought out by my questioning?

A. Oh, my report would give my impression of the fire when I got there; the disposition of the responding crews; the number of lines that operated on the fire; the number of men that responded—in this case, I wouldn't feel qualified to estimate the loss, so that I would leave blank in this particular instance. That about sums up the information that would be on my written report to the Fire Marshal.

Q. I see. And I believe you stated earlier, that you do not know whether or not the department is conducting or has conducted an investigation in the cause or facts surrounding the fire?

A. Well, I have reason to believe that there was a [329] preliminary investigation at the scene. There was a Fire Marshal's man there, and I later read comments in the newspaper that were made by a member of the Fire Marshal's Office. I have that

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Cecil F. Roth.)

much knowledge, but as to whether or not there is any further investigation being conducted, I have no knowledge.

Q. Do you know whether Mr. Gilman was present at the scene?

A. I don't believe he was; I didn't see him.

Q. I see. Now, I just want to clarify this a bit. Chief Post had indicated that in the event an investigation were conducted, that you would be the likely one to be assigned to such investigation. From what you have told me now, I assume that this is somewhat in error—that it wouldn't really be yourself that would perform such an investigation.

A. Well, I hesitate to be placed in a position of saying my superior is in error. I could certainly be assigned.

Q. Well, I'm not trying to embarrass you or place you in an embarrassing position. What I'm getting at, however, is that as a general rule, it is more common from Fire Marshal's office to make the personal investigation of the casualty?

A. Well, perhaps a little elaboration is in order. As a Battalion Chief, we are expected to investigate and determine cause whenever possible. This is true in structural fires and in any other type of fire we encounter, however, in anything that is somewhat complicated, or where there is a loss of life, or where damages are exceedingly heavy, or where we cannot [330] readily ascertain the cause, we are directed to call upon the Fire Marshal's Office for

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

help, which I would certainly do in this case, were I directed to investigate this fire, and my experience would indicate that the size of the fire alone and the amount of the loss would cause that action to be automatically taken if there were an investigation—that it would not be down at my level.

Q. I see. I believe you have answered my question very well. Now, Mr. Roth, is there anything else, at all, that you would care to add to your testimony at this time, that you feel might be pertinent, that has not already been brought out?

A. No, I don't think of anything.

Q. At any time after your initial arrival, did you observe any ship's fire fighting equipment at the scene?

A. I observed a fire hose on deck. That's as much as I can remember; I don't remember seeing any fire-fighting equipment below.

Q. Do you recall seeing a can or a container in the hold, that did not appear to be part of the cargo—let me clarify this for you just a little bit—it was brought out in previous testimony that the welders who had been down in the hold did have nearby, a container of water that they felt the longshoremen had left behind. It had contained drinking water, and that they had used this to attempt to douse the fire when it first occurred, and the question now, is whether [331] or not you might have observed this container down there, and we have no idea of its description, other than it ap-

Respondent's Exhibit No. 23—(Continued)

(Testimony of Cecil F. Roth.)

peared to be a size equivalent to holding five gallons. A. I didn't see it.

Q. Upon your first arrival, did you observe the extent of the fire, to be able to determine whether it had advanced to sufficient portions?

A. Sufficient portions to what, sir?

Q. Well, to being a major fire, we'll say—at the time you arrived.

A. It was a major fire when we arrived, yes, sir.

Q. Did the fire, itself, appear such as to give the impression that it was a delayed report?

A. Well, that's always a little hard to determine. Certainly I wasn't able to make any such judgment at the time, not knowing exactly what the hold contained. Upon becoming familiar with the contents of the hold, I would certainly be of the opinion that it was not a prompt report. We did not get a prompt report of the fire.

Q. Were you able to make any estimate, yourself, as to approximately how long the fire had been in progress at the time you arrived, merely by what you observed?

A. I'd be on pretty dangerous ground, making such an estimate. I feel I've gone about as far as I honestly can, when I say that I would, in all good judgment, say that it was a delayed report. [332] Now, I would hesitate to say how long it was delayed; I feel that this cargo being somewhat compact, that it did take a few minutes to



Respondent's Exhibit No. 23—(Continued)  
(Testimony of Cecil F. Roth.)

gain the headway that it did, but I wouldn't like to estimate how long it took.

Q. As I understand it, this term that we have had used by yourself and the previous witness—this term—"delayed report," must refer to some official terminology. I wonder if you could just describe the meaning of "delayed report" as used by yourself or members of the fire department.

A. Well, as used by myself, I would say it means a fire that is not reported as quickly as possible.

Q. Is it a common term used by the members of the fire department?           A. Yes, I think so.

Q. It does not refer, specifically, to any time element, other than the term "delay"?

A. I think that's right.

Q. In other words, it does not define the length of "delay," but merely the fact that the report—by a delay—might have been made more expediently.           A. I think that's right.

Q. Is there anything further that you'd care to add at this time?

A. I don't think of anything that I could add, Commander.

(Witness excused.)

(Short recess.) [333]

Respondent's Exhibit No. 23—(Continued)

JOHN P. BEUTGEN

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

Examined

By Lt. Cmdr. Mason:

Q. What is your full name and address, sir?

A. John P. Beutgen, 1620 Cerro Gordo, Los Angeles, California.

Q. How do you spell that last name?

A. Last name? Capital B-e-u-t-g-e-n.

Q. And how are you presently employed, Mr. Beutgen?

A. As First Assistant on the SS Robert Luckenbach.

Q. And how long have you been so employed? Approximately?

A. Approximately. With the company or in this one position?

Q. In this one position on the Robert Luckenbach as First Assistant?

A. About four months.

Q. And how long have you been employed aboard the Robert Luckenbach in all? A. Two years.

Q. And how long have you been employed by the Luckenbach firm? A. Seven years.

Q. Were you Second Assistant prior to this?

A. Right, I was Second Assistant.

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

Q. And I have before me a copy of the crew list for the last [334] voyage of the Robert Luckenbach in which it is indicated that your license number is 225 129, would that be correct, sir, to the best of your knowledge?

A. Yes, that's it.

Q. How long have you been sailing in a licensed capacity, Mr. Beutgen?

A. Since about 1944.

Q. And were you employed as First Assistant Engineer on board the Robert Luckenbach on 2 April, 1958, the date of the fire, is that correct?

A. That's right, sir.

Q. What specifically are your duties as First Assistant Engineer?

A. Handle supervision of the engine room over the unlicensed personnel.

Q. And you are directly accountable to who?

A. Chief Engineer.

Q. I see. And do you have a watch schedule in port?

A. Myself?

Q. Yes.

A. I am on day work.

Q. You are on day work, and would that be from 8 to 5?

A. 8 to 5 and at any other time I am needed.

Q. I see. And at sea, you have a regular sea watch?

A. No, I am on day work at sea. [335]

Q. Day work at sea also? Were you aboard the vessel at the time of the fire on 2 April?

A. No, I wasn't.

Q. When had you left?

A. About 6:15.

Q. And you returned when, sir?

## Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

A. About 6:40, maybe before that. I am not sure what time I came back.

Q. A period of approximately a half an hour, was it?      A. Approximately, yes.

Q. And were you at the terminal or had you left the area to go up town?

A. No, I just walked up to the corner for a newspaper, was all.

Q. I see. At the time that you left at about 6:15, did you observe whether or not the longshoremen were aboard?

A. No, they had knocked off about five minutes to 6.

Q. I see. Now, when you came back aboard at about 6:40 as you stated, what did you observe?

A. Well, the fire had started; the Fire Department had arrived. That's what I came back following.

Q. There had been no unusual activity or indications of any fire or casualty at the time you left the vessel at 6:15, had there?      A. None at all. [336]

Q. And what did you do when you came back and observed the Fire Department and the fire in progress?

A. Well, find out what had been done up to that point where I would have anything to do with it.

Q. Did you speak with someone?

A. Well, I didn't see any of the officers. I don't know for sure where they were. I saw some of the

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

crew and asked how bad it was and—— (interrupted).

Q. Where were you at this time? I mean, did you go back—— (interrupted).

A. Still at the gangway—just at the gangway—you can look right back there. I didn't particularly want to go back and get in the firemen's way, until I knew more what was going on.

Q. Was there a gate watchman at the gangway at this time?           A. Yes.

Q. And you asked, you say, what was going on?

A. Yes, well, just for general information.

Q. I see. What did you do after that?

A. I hooked up a hose to the fire line.

Q. Now, when you speak of hooking up a hose to the fire line, what—what hose, where did you obtain the hose and to what fire line?

A. It was my water—my water hose for taking fresh water, which is separate. [337]

Q. And this was already hooked up to the terminal facilities, was it?           A. Yes, it was.

Q. And you disconnected it then, did you, from its connection on board ship?

A. You mean to my filling line for the water tanks?

Q. Yes, to your filling lines.           A. Yes.

Q. You disconnected it? And then where did you hook it to?           A. To a standpipe right next to it.

Q. To a standpipe right next to it. And did anyone assist you in this operation?           A. Wiper.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of John P. Beutgen.)

Q. A wiper, and what was his name?

A. I believe it was Padilla.

Q. If I hand you this crew list, would you be able to pick him out? (Document handed).

A. Yes.

Q. Approximately how long would you say it took you to make this connection?

A. Oh, I suppose, guessing—would be three minutes.

Q. About three minutes. And what was the purpose of the connection?

A. Oh, in case they wanted water on our own fire line.

Q. Did you have knowledge that there was no water prior to [338] this time on the fire line?

A. Yes.

Q. How did you know that the fire main system—ship's fire main system was not operating?

A. Well, I knew that they took a section of the fire line out for repairs and blanks put on in place.

Q. When you say "they," do you refer to the Albina— (interrupted).

A. I am referring to the Albina Machine.

Q. When was that done?

A. I think they took it out about 3 o'clock in the afternoon.

Q. Do you know the reason that it was taken out?

A. Yes, the pipe was giving out on the bend.

Q. Who had originally discovered this faulty

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

section of the pipe? A. I did.

Q. When was that? A. Panama Canal.

Q. Approximately how long prior to arrival at Portland, if you can recall?

A. About three weeks.

Q. And as I understand it, the weakened area was drilled, tapped and plugged. Did you do this yourself, personally?

A. No, I didn't. I had my machinist do it.

Q. The machinist did it? [339] A. Yes.

Q. Did anyone supervise the machinist in the repair? A. I did.

Q. You did? A. (Affirmative nod.)

Q. And were any of the other engineers aware of this particular failing? A. Oh, yes.

Q. Who? A. All of them.

Q. All of them? Was the Chief Engineer aware of it?

A. Oh, yes. I reported that to him immediately.

Q. How about the Second? A. He knew.

Q. And did the Third Engineer know it also?

A. Yes.

Q. How about the Junior Third?

A. He knew.

Q. Now, do you know whether any plans were made— (interrupted).

Mr. Wood: Commander, could I interrupt now instead of later on and suggest something? I don't think it is clear, at least, it isn't to me, whether he means all the engineers knew of this leak being

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

plugged or whether he means they all knew that this section had been taken out. [340]

Lt. Cmdr. Mason: Oh, no, I was referring specifically to the leak being plugged.

A. That is what I assumed that you were referring to.

Q. Yes, that's right. And your answers were directed with that in mind, is that right?

A. Yes.

Q. And do you know whether any arrangements were made to replace this portion of the fire main system? A. I learned of it that morning.

Q. That morning? How did you learn it?

A. Well, the Chief Engineer, Mr. Sterling, the Port Engineer, we were going down the engine room. The Chief was showing him the line. I stopped on my way down and got in on the discussion.

Q. And what did this discussion involve?

A. Well, it was mainly how much of the line to replace, whether to take out a whole section of it or break it and weld in a smaller section.

Q. I see. Was there any indication made at that time as to when the line was to be removed?

A. No; not immediately as far as I knew—some time that day was all.

Q. It was some time that day it was to be removed? A. But no time was given.

Q. No, but you understood that it would be removed that day? A. Yes, some time. [341]



Respondent's Exhibit No. 23—(Continued)  
(Testimony of John P. Beutgen.)

Q. Was any indication made as to when they would be able to expect a replacement?

A. None that I recall.

Q. Now, was this information passed on to anyone else in the engineering department? Were any of the other engineers made aware of it?

A. The Second knew about it. I thought I told another, but evidently I didn't.

Q. The Second Engineer, you say, knew about it? How do you happen to know this?

A. Because he showed them—when they came to take the line out, he showed them what section was to come out.

Q. Do you know whether the Third or Junior Third were made aware of it?

A. I can't be sure.

Q. Now, after overhearing the discussion pertaining to the removal of the line and its replacement, was any discussion made that you know of or did you discuss the advisability of rigging up any alternate means for insuring water to the hydrants on board?

A. Well, when the line was blanked, I knew what we were—what arrangements were being made so we could put water on—that's why we blanked it.

Q. How did you know that these arrangements were being made? I mean, did someone discuss it with you or did you overhear a [342] discussion to that effect, or what?

A. Well, I heard when they were talking about

Respondent's Exhibit No. 23—(Continued)  
(Testimony of John P. Beutgen.)

to put the blanks on that we could get water so we could put water anywheres on the ship, if necessary.

Q. Who was this that was saying that?

A. The Chief was talking to Mr. Sterling. He wanted the lines blanked so he could put water anywheres on the ship.

Q. I see. Well, now, you of course are familiar with the fire main system, are you not?

A. Yes.

Q. With this line removed and the blanks installed, was it still possible to obtain water at all the hydrants throughout the ship?

A. If I made the connection, yes.

Q. If you made what connections?

A. Well, one right there on the dock.

Q. Oh, I see, in other words, if you made the connection from the hydrant ashore to the—to the ship. But at the time that you left to go ashore, you stated that—or did you state—was this hooked up at this time? A. Not to the fire system, no.

Q. It was hooked up then to the water tanks?

A. Palatable water.

Q. Palatable water, I see. Now, did the Chief Engineer issue you any orders relative to the hooking up of this line? [343]

A. Not directly issued an order. He knew when we got the blanks we would get it hooked up.

Q. In other words, he took it for granted that you would hook up this line after the blanks were installed? A. Yes.

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

Q. I see. Did they bring the blanks aboard then and install them?      A. Yes.

Q. When was that done?

A. Well, that's why I used 3 o'clock that they took the line out, because afterwards, I checked to be sure that the blanks were put on.

Q. Oh, I see. They took it out about 3 and then you checked and found that those blanks were (interrupted)—

A. Well, the workmen were still there.

Q. And then did you go ahead and hook up the fire main system?      A. No.

Q. Why not?

A. Well, I knew I was going to be right there, just outside of a few minutes. I was trying to get some water on before sailing and I thought that I would be through before 6 o'clock but wasn't.

Q. But this was about three, was it not?

A. Yes. [344]

Q. And you figured you would be through filling the tanks by 6?

A. Yes. I was going to be there all night anyway.

Q. I see; well, that would be a difference of about three hours involved though. Didn't you feel it rather important to have the fire main system operating or in operative condition during those three hours?      A. Yes.

Q. But you took no action to do anything about it, apparently, is that right?      A. No.

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

Q. Now, let me ask you: Were there any other hydrants on the dock that you are familiar with that you might have hooked up another hose, or (interrupted)—

A. None that I know of.

Q. How about a "Y" connection, could that have been used so as to have water pressure maintained in the hydrants at the same time?

A. Well, it could have been, I think.

Q. Did you have these couplings available on board?

A. No, I would have to have made them.

Q. You would have to have made them?

A. Yes.

Q. Now, is there some other engineer that is on day work with you? [345]

A. Second is on—stands the watch—from 8 to 4.

Q. I see. He goes off at 4 o'clock in the afternoon?

A. In the afternoon.

Q. When he went off, did he make any report to you, in connection with any of the engineering appurtenances, relative to operation, or auxiliaries, or anything at all?

A. I don't remember if he did or not.

Q. Now, he would have been relieved by whom?

A. The Junior Third.

Q. The Junior Third? Were you present when that relief was made?

A. I may not have been right in the engine room at the time, no.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of John P. Beutgen.)

Q. Where does the engineer on watch stand his watch in port? Is he required to actually be in the engine room at all times?

A. No, not at all times. We require what we call floor plate watch, but that's just our own set-up.

Q. By that you mean (interrupted)——

A. I want an engineer down there at all times.

Q. Not necessarily one of the officers, but it could be a certificated man, is that what you mean?

A. No, I want one of my engineers on the (interrupted)——

Q. Oh, I see. You do require that, that there shall be a licensed officer down below at all times?

A. Yes. [346]

Q. And then if the Second is not down there, what (interrupted)——

A. I relieve him.

Q. You would relieve him. I understand. Now, as I understand it, the replacement line for the fire main was installed at some later time. Were you familiar with the installation of that line?

A. When that was put back in?

Q. Yes.           A. Yes.

Q. When was that done?           A. Next day.

Q. In the morning, do you know?

A. Yes, I believe I put the final test on it at around 11:30.

Q. I see. Now, the installation was actually done by Albina, was it?           A. Yes.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of John P. Beutgen.)

Q. Were any of the other engineers present at the time?

A. The Chief was. Now, I don't know where the Second was. He was doing boiler work.

Q. I see. Were any of the other engineers present during the removal of this line?      A. No.

Q. Were you there at the time?

A. Not at the time they took the line out. I was doing some [347] other work.

Q. In the engine room?

A. No, I was out of the engine room.

Q. Could I assume then that the Second Engineer must have been in the engine room?

A. Well, he was there, but he wasn't up when they were taking—he told them what section of line came out and went back down on his own job.

Q. Right, but he must have been in the engine room (interrupted)——

A. Oh, he was in the engine room.

Q. So he was then aware of the fact that the line was being removed?

A. He should have been aware of it, yes.

Q. And I believe you stated that he was aware that it was going to be replaced?      A. Yes.

Q. And you stated that after it was replaced, that you actually made a test of the line?

A. (Affirmative nod.)

Q. Did the test prove satisfactory?

A. Yes.

Q. Do you know of your own knowledge whether

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

Mr. Elixson, the Junior Third, was entirely ignorant of the removal of this fire main line and the blanking off? [348]

A. To my knowledge, I am not sure.

Q. You don't recall at any time having discussed the particular item with him, do you? A. No.

Q. Would it have been an item of sufficient importance that you would expect your watch engineers to pass it on to each when relieved?

A. Yes, I would.

Q. Now, when you went off duty at 5 o'clock, did you issue any instructions to any of the other engineers? A. No.

Q. Did you issue any instructions to any of the certificated personnel?

A. I don't believe I had seen any of them.

Q. Is the fire main system used for washing down topside, as a general rule, on board?

A. What do you mean, the mate?

Q. Yes, does he use the fire main system? Do they call for water on the fire main system for washing down? A. Yes.

Q. Do you know whether the system was used for that purpose on the day of the fire?

A. No, I don't.

Q. Do you know when the fire main system was last used prior to the fire? [349]

A. I know we used it the day before.

Q. It was functioning satisfactorily at that time, except for the fact that you did have a fire main

## Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

section with a—— (interrupted). A. Leak.

Q. ——repaired area? A. Repaired area.

Q. Now, do you know of your own knowledge whether the inoperative status of the fire main system was reported to anyone else outside of the engineering department, such as the Master or Chief Mate or anyone else at all? A. I don't know.

Q. However, there was the one exception that you were present when it was reported to Mr. Sterling, is that right?

A. Oh—yes, Mr. Sterling.

Q. But you don't know whether it was reported to any other ship's member outside of the engineering department? A. No, I don't know.

Q. Have you been asked to give any testimony relative to this casualty prior to this time now?

A. No.

Q. You have not. And can I safely assume that you were not instructed by anyone to suppress any pertinent information that night—— (interrupted).

A. No. [350]

Q. ——you might be aware of? A. No.

Q. Now, when you reported back to the ship, at approximately 6:40 p.m., and observed a fire in progress and the firemen there, you stated that you then, immediately, with the assistance of a wiper named Padilla, shifted the hose from the dock facility that had been hooked up to the fresh water tank over to the connection for the fire hydrants. Now, what did you do after that?



Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

A. Turned it on for one thing.

Q. You did turn it on?

A. But then they didn't want it.

Q. I see. Well, of course, the fire department was at the scene at this time. But what did you do after that? Did you stay out on deck to assist?

A. Yes.

Q. And did you assist in any other way?

A. Yes—anything we could do. The main thing was to keep out of the firemen's way.

Q. I see. Now, when you first reported back aboard at 6:40 and saw the fire conditions in progress, were you told by anyone that there was no water to the fire system, or did you immediately, knowing there was no water, go over to make this shift in the connection?

A. That's why I made the shift in the connection. [351]

Q. In other words, you made it as a result of your own knowledge that there was no fire—no water on the fire main. You didn't make it after someone reported to you that they weren't getting water?

A. That's right.

Q. Did anyone subsequently report to you that they had not gotten water, such as— (interrupted).

A. Yes, well, it was much later when they told me about it.

Q. But not during that particular interim of time?

A. No.

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

Q. Who was it that told you much later?

A. I don't—two or three people. I don't know which one would be the first one.

Q. Did the watch officer—— (interrupted).

A. He was one of them, yes.

Q. He was one of them? Did you see the Chief Engineer when he returned aboard? A. Yes.

Q. Did he contact you relative to the casualty and what had happened?

A. Well, I suppose that's why he came into my room.

Q. And did you tell him at this time that the fire hydrants had not been hooked up at the time—immediately prior to the fire?

A. I don't think I had to tell him. I think somebody else had [352] already informed him.

Q. I see. Do you feel that it was a safe practice to leave the vessel without the fire hydrants operating for a period that you estimated was going to be some three hours?

A. I was only gone about thirty minutes.

Q. But you stated that the—that the fire main section had been removed about 3 o'clock and you weren't going to hook up the hose to the fire hydrant until about 6, when the tanks were filled, which would be an interim of about three hours, wouldn't it be?

A. Well, I still could give them water. The fire—that didn't cut out the port side of the ship. We still had water on the port side of the main house.

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

Q. Water to how many hydrants?

A. I think there were four.

Q. Four right adjacent to the main deckhouse, is that it?

A. They are all on the main deckhouse.

Q. And that would be water fed by a riser from the engine room, is that right?      A. Yes.

Q. But there would be no water to the hydrants located forward and aft in the vicinity adjacent to the cargo hatches?      A. No.

Q. You felt that this was not an unsafe condition then?      A. It wasn't safe, no. [353]

Q. But when you went off at approximately 6:15, you had not reported this condition to the mate or anyone else, isn't that right?      A. That's right.

Q. Before Mr. Elixson went on watch, did he contact you for any instructions?      A. No.

Q. And after he did go on watch relieving the Second Assistant, did the Second Assistant contact you to advise you of any unusual conditions or to discuss with you any of the events of the day?

A. I talked to him, but what we talked about, I don't know.

Q. That would be Mr. Porter, is that correct?

A. Right.

Q. Who mainly aboard the vessel is responsible for maintaining the water to the hydrants?

A. I am.

Q. But what I meant specifically was the department—it would—— (interrupted).

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

A. The engine room.

Q. Primarily the engine room department—the deck force would have no initial concern with the supplying of water to the hydrants? A. No.

Q. And with respect to filling the fresh water tanks and [354] maintaining adequate supply of palatable water, that would also be the— (interrupted). A. Engine department.

Q. —engine force? And the particular one in the engine force responsible for the water, that duty is delegated to you on this particular vessel, is that correct, as First Assistant?

A. Well, supervise—see that we get the water and also the fire stations and at the fire pump.

Q. I see. Now, did the Chief Engineer give you any explicit orders to hook up a hose from the shore terminal to the fire hydrant to insure that water would be available at the hydrants?

A. Not explicitly. When I was in on the discussion, talking about removing the line, make sure that there were blanks so that we could supply water.

Q. Well, I wonder if you could just clarify that a little bit. Just how did the discussion go? Explain as closely as you can recall the words of each who were present there at that discussion?

A. Well, I couldn't quote it word for word.

Q. No, I realize that, but if you can— (interrupted).

A. I know the Chief spoke to Mr. Sterling—the

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

idea was to be sure they were blanked and then we could furnish water to any part of the ship. [355]

Q. He mentioned this to Sterling to insure that the lines were blanked off and the primary purpose of that being so that they would be able to then bring water to the hydrants?

A. That's right.

Q. But the Chief Engineer did not then specifically turn to you and make any comment to the effect of hooking up the lines, did he? A. No.

Q. Have you ever served aboard any other vessel that has suffered a fire casualty? A. No.

Q. This is—is this your first experience of a fire aboard the Robert Luckenbach? A. Yes.

Q. Now, is there anything further, Mr. Beutgen, that you would care to add or you feel might be pertinent to this investigation that has not been brought out by my questioning, or anything at all that you would care to say relative to the matter?

A. No.

Q. You stated that it took you, I believe you mentioned, three to four minutes to shift over the dock connection from filling the tanks to the hydrant—was that correct?

A. Well, as I stated, my time might be way off. It was more likely less than that. [356]

Q. Now, assuming that you had been aboard at the time that the fire broke out, how long do you estimate it would have taken you to have shifted that line?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of John P. Beutgen.)

A. Oh, I never timed myself doing it. Maybe two minutes. It's hard to say.

Q. Did it require the use of a spanner?

A. Yes.

Q. Was there a spanner right at the hydrant?

A. Yes.

Q. And was there also a spanner at the fresh water connections?

A. Well, they are right—they are only two feet apart.

Q. I see, the two connections—in other words, the connection to fill in the fresh water tanks and the connection to put water onto the hydrants are only a couple of feet apart and there is a spanner right there?      A. Yes.

Q. You estimate that it would have taken you possibly two minutes or thereabouts?

A. Just about.

Q. Were you aware of any welding that was to be accomplished on board the vessel—any welding whatsoever?      A. No.

Q. Or specifically any welding that was to be accomplished in number 5 hold?

A. I didn't know anything about it. [357]

Q. You didn't know a thing about it. When did you first become aware, if at all, that welding was going to be done or had been done aboard the vessel?

A. About 7 o'clock, I imagine, when I asked somebody how it started. They said that the welders

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

were working down there and that was the first I knew we even had welders aboard.

Q. I see. Were you familiar with any repair item to be accomplished on the vessel which involved a Uni-strut installation in the number 2 lower 'tween deck?       A. No.

Q. You weren't aware of any repair item or installation item of that nature?       A. No.

Q. And you are not aware of any ladder rung missing in number 5 hold?       A. No.

Q. That is, prior to the fire?

A. Prior to the fire, no.

Q. Now, as a general rule, with respect to repair work to be done on board this vessel when it comes in from a trip, do you make up the particular job orders or do you just merely report your findings to the Chief Engineer and he would make it up? How does it normally work?

A. Well, I report my findings to the Chief and if it is something I can't handle and need the shore authority to do it, [358] that then he would take care of it from there on out.

Q. I see. Do you happen to know what the estimated time of departure of the Robert Luckenbach was to be from Portland?

A. Not specific time. I just knew the general day.

Q. What was the information that you had?

A. Saturday.

Q. And where bound?

Respondent's Exhibit No. 23—(Continued)

(Testimony of John P. Beutgen.)

A. To the San Francisco area.

Q. On 5 April? A. Yes.

Lt. Cmdr. Mason: I guess that's it. Thank you very much, sir.

(Witness excused.)

### EUGENE C. PORTER

was called as a witness by the United States Coast Guard, and first having been duly sworn, was examined and testified as follows:

#### Examined

By Lt. Cmdr. Mason:

Q. Will you state your full name and address, sir?

A. Eugene C. Porter, 149-B Kelton Court—spelled with a K—K-e-l-t-o-n Court, Oakland, California.

Q. And as I understand it, Mr. Porter, you are a licensed officer in the United States Merchant Marine presently employed as a Second Assistant Engineer on board the SS Robert Luckenbach, is that correct, sir? [359] A. Yes, sir.

Q. I have before me a copy of the crew list from the last voyage which indicates thereon your license to be number 175 999, would that be correct, sir?

A. Let me verify that. I'm sorry, my Coast Guard ID does not give my license number. I cannot verify that license number.

Q. All right. Do you have your Z number?



Respondent's Exhibit No. 23—(Continued)  
(Testimony of Eugene C. Porter.)

A. Yes, sir.

Q. And what is your Z number, please?

A. Z-369973-D1.

Q. Thank you. And your license is for Second Assistant Engineer, is that correct?

A. Yes, sir.

Q. How long have you been serving in a licensed capacity in the American merchant marine?

A. Total time, approximately four to five years.

Q. And how long have you been going to sea altogether?

A. This last time, since November of '56.

Q. I mean, what is the extent of your seafaring experience, all told?

A. World War II, United States Navy during Korea and this last year.

Q. I see. And how long have you been employed by the Luckenbach firm? [360]

A. This particular time, since about the 28th of January of this year.

Q. And that has been on board the Robert Luckenbach?

A. This particular trip, sir.

Q. And were you employed previously by Luckenbach?

A. Yes, sir.

Q. I see. Now, as Second Assistant Engineer, what specifically are your duties on board the vessel?

A. I am a watch stander, being the 4 to 8 watch—pardon me, sir—clarification. Sea or shore?

Q. Both.

A. Take sea first: Stand the 4 to 8 watch. It is

Respondent's Exhibit No. 23—(Continued)

(Testimony of Eugene C. Porter.)

my job to take care of the oilers, feed water, transferring of fuel, plus keeping the main plant in operation during my watch.

Q. Now, in port?

A. In port, my job is repair work on boilers, taking fuel oil and allied equipment pertaining to the fire room.

Q. And what is your in-port watch?

A. I have the watch from 8 in the morning until 1600.

Q. And is this watch stood at all times in the engine room?      A. Yes, sir.

Q. And you were on watch from 8 a.m. to 4 p.m. on 2 April, 1958, the day of the fire on board the Robert Luckenbach?      A. Yes, sir.

Q. Were you present during the removal of a section of fire [361] main?      A. Yes, sir.

Q. Who actually accomplished the removal?

A. I don't know, sir.

Q. Well, was it ship's force or was it— (interrupted).

A. No, sir, it was, I understand, shipyard— (interrupted).

Q. Shipyard workers. But you were in the engine room at the time, were you?      A. Yes, sir.

Q. And did you witness the actual removal?

A. No, sir.

Q. When the removal was made, do you know whether or not the lines were blanked off?

A. No, sir.

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Eugene C. Porter.)

Q. Where do you normally stand your watch when in the engine room?

A. That particular day, sir, I was working on boilers in and out, both.

Q. I see. How did you happen to be aware of the fact that this section of fire main was being removed?

A. I was told, sir, that evening.

Q. You mean after the removal had been accomplished?

A. Yes, sir. No—— (interrupted).

Q. Was this before or after the fire?

A. This was after the fire. [362]

Q. I see. You were not aware of its removal prior to the fire?

A. No, sir.

Q. Were you aware that the line was scheduled to be removed?

A. No, sir, I am not cut in on anything that happens as far as specifications for work to be done in the engine room.

Q. I see. And neither the Chief Engineer nor the First Assistant had advised you of the fact that this removal was to be accomplished prior to your going off watch at 4 p.m.?

A. No, sir.

Q. And you did observe other than ship's force in the engine room accomplishing a removal though, while you were on watch, is that right?

A. No, sir.

Q. You did not?

A. No, sir. I can make that a little clearer, if you wish. This section of pipe that had to come out,

## Respondent's Exhibit No. 23—(Continued)

(Testimony of Eugene C. Porter.)

it is up in the fidley—in fact, it is up two gratings—or one grating where I ordinarily stand my watch. There is very little reason for any of the ship's officers or the engineers to go up there. So, for that reason, and I, working on the floor plates and in the boiler and on top of the boiler, did not witness any part of that.

Q. I see.

A. So that is the reason—it was up in one grating and [363] how much was to come out or what was to come out, I have absolutely no idea because as I say, I was not cut in on any of the specifications or work to be done.

Q. Were you aware of the fact that that particular portion of line to be renewed did have a plug in it as the result of an earlier leak?

A. Yes, sir.

Q. You were aware of that? A. Yes, sir.

Q. Did you assist in the installation of that plug?

A. That happened at sea, sir, and it was being done while I was off watch.

Q. I see, but you do know that such a repair was accomplished? A. By the plug?

Q. Yes, sir. A. Yes, sir.

Q. And the First Assistant or Chief never discussed with you or mentioned the fact that that line would be renewed when the vessel reached port?

A. No, sir.

Q. Now, you went off watch at 4 o'clock—did

Respondent's Exhibit No. 23—(Continued)

(Testimony of Eugene C. Porter.)

you issue any instructions or pass on any word at all to your relief?

A. The usual items as I knew them.

Q. And what did this include?

A. That we weren't going to fire off the boiler that I had [364] been working on; leave the pressure off of it; in fact, you couldn't put pressure on it because there was no water in the boiler. I had dumped it—let him know about that.

Q. What boiler was that?

A. That was the starboard boiler.

Q. Starboard boiler? You were steaming on the port boiler?

A. On the port boiler—it was donkey—and the rest of the plant was normal. He always makes the round before he relieves me and he found everything in good order and it was just the boiler that I believe that I cut him in on.

Q. Were you filling any tanks at the time, or do you know?

A. Yes, sir—filling tanks—water? Fresh water?

Q. Yes.

A. The double bottoms had been filled on my watch and water was going to the forepeak. He was also informed of that.

Q. I see. Who was supervising this—yourself? I mean, in other words, was the watch engineer the one to supervise the filling of the tanks, or was this normally accomplished by the First Assistant on day work?

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Eugene C. Porter.)

A. The First Assistant generally—I am going into generalities here. He generally takes care of it with the help of the oiler on watch. The standpipes for the overflow come into the engine room out of those double bottom tanks. The oiler is generally standing around doing not too much of anything, so he generally watches those tanks. [365]

Q. I see.

A. Then, when they are filled, the oiler generally knows where the valves are. If he doesn't, he can either come to me or the First Assistant and we will open the valves going to either the after peak or the fore peak.

Q. I see. Now, I would like to have this clarified for me a bit. You are familiar with the fire main system and the fire pumps aboard, are you?

A. Yes, sir.

Q. When you start up the fire pump—I understand it to be a centrifugal pump?

A. Yes, sir.

Q. There is a gauge there which will indicate the pressure on the line, even though there is no water being discharged out of any of the hydrants, would that be correct?

A. Yes, sir.

Q. And the removal which you subsequently know about now—the removal of this portion of the line—of the fire main, where they blanked off the area, that wouldn't have changed what I have just mentioned, would it? In other words, the indicator dial would still show a pressure if the fire pump

Respondent's Exhibit No. 23—(Continued)  
(Testimony of Eugene C. Porter.)

was operating?           A. Yes, sir.

Q. Now, when the fire pump is operating with a pressure and the line is in proper order and then when one of the hydrants is [366] turned on, does that pressure indicator tend to drop?

A. Yes, sir.

Q. It will drop?           A. Yes, sir.

Q. In other words, would that be an immediate method of knowing when water is actually being discharged on deck then?

A. Yes, sir. Conversely, it works the same way, when valves are shut off, our pressure goes up.

Q. Would rise?           A. Would rise.

Q. Is it an appreciable difference for say, the use of one hydrant, such that you would readily notice it on the indicator dial?

A. You would have—if I remember this dial correctly, you would have to be looking for it.

Q. I see.

A. As an example, water on deck to wash off the anchor chain.

Q. Now, if you were on watch in the engine room at the time that a fire alarm was sounded, would it be your duty then as watch engineer to immediately start up the fire pump or would you wait until you were actually given orders to put water on deck?

A. It is the procedure on most merchant ships, sir, when you get the fire alarm, to wait until you are ordered to put water on deck. [367]

Q. I see. All right, now, when receiving such an

Respondent's Exhibit No. 23—(Continued)

(Testimony of Eugene C. Porter.)

order to put water on deck, is it then your duty as watch engineer to see that that pump is started?

A. Yes, sir, it is my duty to see that it is started.

Q. Then when it is started, would you then observe the indicator dial to see if the pressure had been brought up?

A. It is second nature, sir.

Q. It is. And have you had occasion to be on watch in the engine room during any fire drill at any previous time on board the Robert Luckenbach?

A. Yes, sir.

Q. And have you had occasion then to start the pump when water has been requested on deck?

A. Yes, sir.

Q. And it has been second nature to notice the dial?

A. Yes, sir.

Q. And do you then continue to watch the dial, to see if there is any drop—that is, whether they actually opened the hydrants to take water on deck?

A. No, sir. When I say "no, sir," not to continue to watch it. Watch it and make sure that there is pressure there and when we are satisfied in our own mind that the water is going through, then it possibly could be that something else would come up and your attention may be directed to something else. You are not just watching one thing. You have many things to watch. [368]

Q. Well, what I am trying to get at, Mr. Porter, specifically, is that if you were to be requested to put water on deck and you, as you have stated, you



Respondent's Exhibit No. 23—(Continued)

(Testimony of Eugene C. Porter.)

started the pump and then noted the pressure coming up on the dial, would that alone be sufficient to your way of thinking to assume that there is now water on deck, merely because the pump is operating and the dial reads the pressure?

A. Sir, you have another dial, too, that is rather important, and that is the suction valve. And you want to make sure that you are getting suction as well as getting a discharge.

Q. I see. But it wouldn't necessarily behoove you then to continue to watch the pressure gauge to insure that there isn't a drop, indicating that they had opened the hydrant and actually gotten water, would there?

A. Sir, the best I can answer that, as I say, you do watch it, but you don't stand right there and glue your eyes to it. Supposing they opened up, say, five hydrants, you are going to get quite an appreciable drop in pressure. But if only one is opened, why, it won't make too much difference, but if they opened five or ten, yes, then you have to speed up your pump.

Q. I see. It wouldn't be—there wouldn't be any need to alter the speed of the pump with the use of say, one or two hydrants, would there?

A. Not on this particular pump, sir. [369]

Q. What is the pressure—a matter of standard pressure?

A. One hundred pounds, maybe one hundred and twenty.

Respondent's Exhibit No. 23—(Continued)

(Testimony of Eugene C. Porter.)

Q. That's on the indicator?

A. On the indicator—one hundred to one hundred and twenty pounds.

Q. Now, after you went off watch at 4 o'clock, did you remain aboard or did you go ashore?

A. No, sir, I went ashore.

Q. About what time did you leave?

A. As soon as I could get off. I don't recall the exact time, sir.

Q. And when did you return aboard the vessel?

A. The next morning.

Q. About what time?           A. About 7:20.

Q. Now, after you came back aboard, did the Chief Engineer call you in to discuss the fire casualty with you?           A. No, sir.

Q. Did anyone call you to discuss the fire casualty or the failure of the system—water system—fire main system to have provided water?

A. No, sir.

Q. Were you familiar with any welding repairs to be accomplished aboard the vessel on its visit to Portland at this time?           A. No, sir. [370]

Q. Now, I would like to get a little bit better description, if you can render it for me, of the fire main system on the ship. As I understand it, the removal of this section of the fire main that you have since understood was removed—water could not be supplied to certain portions of the deck hydrants. Now, first of all, do you know off-hand how many risers there are in the system?

Respondent's Exhibit No. 23—(Continued)

(Testimony of Eugene C. Porter.)

A. No, sir, I don't.

Q. Are you familiar with the fact that the removal of that section of line did prevent water from reaching certain hydrants on deck?

A. Now, rephrase that, sir?

Q. In other words, think over for a moment, the system as you know it—the fire main system as you know it, and see if you can describe what hydrants would—have failed to receive water on deck with the removal and blanking off of that section that was later done?

A. Well, actually removing that section did shut water off to all parts of the ship, the way I understand the system.

Q. Well, there is a—mind you, I am not trying to catch you on this. If you don't know, it is perfectly all right, but I am just trying to clarify this thing in my own mind. We already understand that there is one riser, evidently emanating from the engine room space, which was not affected by the removal of this particular portion of line. Are you familiar [371] with that one?

A. Oh, oh, no, sir, I am not familiar with that.

Q. I see. Because the main thing I am trying to determine is, how many hydrants off of that one riser were still operative?

A. No, sir, I am not familiar with that.

Q. I see. Now, is there anything further that you would care to add at this time or feel might be pertinent to this investigation?

A. No, sir.

Respondent's Exhibit No. 23—(Continued)

Lt. Cmdr. Mason: Very well, that's all. Thank you very much, sir.

(Witness excused.)

Lt. Cmdr. Mason: Now, we have one more item for the record here. Will you mark this exhibit number 8?

(A document was marked Coast Guard Exhibit 8.)

Lt. Cmdr. Mason: For the present, at least, the interrogation of further witnesses is not contemplated by the Coast Guard. However, for all of you people present who desire to be present in the event further witnesses—it should be found necessary to recall or to call new additional witnesses at some later time, I will ask that you leave your name and your telephone number where you may be reached with our stenographer before you leave today. Now, before concluding this portion of the investigation, [372] I will introduce into the record, Exhibit number 8, which I shall identify as a photocopy made this date at this office of the pertinent page, including Section 16-2527 of the Police Code—incidentally, gentlemen, I have copies for you here—the Police Code of the City of Portland, Oregon.

And with that, let us adjourn.

(Whereupon, at 11:42 o'clock a.m., April 8, 1958, the preliminary investigation into the above-entitled matter was adjourned.)

Received in evidence January 6, 1960. [373]

Mr. Wood: Your Honor, Exhibit 21 is the bills of lading, and we rely on them because they incorporate the fire statute. However, Mr. Gearin has already offered all the bills of lading. You have offered all that cover your cargo, have you not?

Mr. Gearin: Yes, sir.

Mr. Wood: So I don't really see any use in duplicating [15] them.

The Court: Let's not have a duplication.

Mr. Wood: He offered them only for one purpose—I forget what the purpose was—but I want to use that exhibit for my own purpose, namely, incorporating the fire statute in the bill of lading.

Mr. Gearin: That is all right with us, if our exhibits are used for that purpose, your Honor.

The Court: Yes. Any objection, Mr. Krause?

Mr. Krause: I haven't any, no.

Mr. Wood: So I will not duplicate them.

I offer Exhibit 24, which is a diagram of the No. 5 hold.

Mr. Gearin: No objection.

Mr. Krause: We have none.

The Court: Admitted.

(The diagram of No. 5 hold above referred to was received in evidence as Respondent Luckenbach's Exhibit 24.)

Mr. Wood: I offer Exhibits 25-A and 25-B, which are, respectively, two photographs of the No. 5 hold. They were not taken, however, at that time. They were taken at a later time.

Mr. Gearin: No objection.

Mr. Wood: They are merely illustrative of the situation.

Mr. Krause: I want it understood that the lumber on the [16] floor there, and so on, does not represent the condition at the time.

Mr. Wood: They do not represent the condition at the time. They just show the dimensions of the hold, and so forth, and the shape of it.

Mr. Krause: Yes. That is all right. For that purpose we have no objection.

The Court: They will be admitted with that understanding.

(The photographs above referred to were received in evidence as Respondent Luckenbach's Exhibits 25-A and 25-B, respectively.)

Mr. Wood: We have no further evidence at this time, your Honor. Whether we shall call any witnesses or not, of course, depends on what is offered. We may have some rebuttal. At this time we have no further evidence.

Mr. Krause: Mr. Gearin's Exhibit No. 2, your Honor, I am objecting to on the ground that it is all hearsay. It is a report of the fire marshal as to what was reported to him. The very same people that he interviewed testified under oath before the Coast Guard, and his conclusions as to what caused the fire, and so on, I think are improper. We object to that.

Mr. Gearin: My position on that, your Honor, is that there is testimony in the Coast Guard hearing of the qualifications of the men who attended the

fire. Your Honor, the testimony is [17] that the firemen arrived and had water in the hold within seven minutes of the time that the call was placed by Mr. Radovich. There is testimony in the record that normally in fire tests the men can get water in the hoses within one minute aboard the ship. Now there is testimony and references in the record to the qualifications of these men who made the investigation and report on behalf of the fire department. I think most of them had around 20 years' experience, and one had had three years' experience as a naval instructor in the Manchester Fire School, teaching fire-fighting aboard naval vessels. I think, your Honor, that their opinions as to the actual cause of this fire will be of aid to the Court. There is no question that these men are eminently qualified. Whether or not your Honor feels that expert testimony is desirable on this point—we know that the men arrived there within seven minutes, or they arrived within four minutes and it took them three minutes to put water in the hose. Whether or not that would be of benefit to the Court in determining this matter—

The Court: As to what caused the fire, you mean, Mr. Gearin?

Mr. Gearin: Yes.

The Court: Actually, if I understand the statement correctly here from Mr. Krause, there is no issue here as to what actually caused the fire, as to the origin of it or why it started. In view of that, Mr. Gearin, on what theory would it [18] be admissible?

Mr. Gearin: Your Honor, I know that as an aid to the trier of the facts we sometimes have to rely upon the testimony of others who know about these things.

The Court: I agree with you on that. But certainly that is not the way you normally approach it, where the conclusion is in writing by the particular person and the other side does not have an opportunity to cross-examine as to the particular conclusion or opinion that he may arrive at.

Mr. Gearin: For example, your Honor, it is customary and it is universal, I know, in this District, both in the State and Federal Courts, that in the hospital records you have the opinion of the doctor there, with the doctor never even called, and that goes to the jury as to the opinion of the doctor that there is bronchial trouble or his back was broken, or something.

The Court: Our Oregon Supreme Court reversed a case in the last year for admitting that very thing in evidence, Mr. Gearin.

Mr. Gearin: I am not familiar with that decision, your Honor. I thought I followed all of them quite carefully. But that is the purpose, your Honor. I have purposely avoided reciting what the opinion was.

The Court: I will reject the offer, Mr. Gearin. I don't think it is admissible.

Mr. Krause: Your Honor, you have ruled, but may we have [19] our objection also? I should have noted it.

The Court: I have rejected it.



Mr. Gearin: May I ask that the offer be considered?

The Court: Oh, yes.

Mr. Gearin: Thank you, sir.

The Court: Mr. Krause, do you have any exhibits?

Mr. Krause: Mr. Johansen will offer our exhibits, your Honor.

Mr. Johansen: Our No. 41 is an extract from parts of Title 46, Code of Federal Regulations, Part 95, merely the subpart headings, and a quotation from that section. Our purpose in offering this is in support of our objection to the city ordinance as showing partially the extent of the federal regulations in this field. We offer it for that purpose. We also have authorities, statutory and judicial, which we will have a brief on very shortly.

The Court: Mr. Gearin?

Mr. Gearin: I have no objection to the Code of Federal Regulations, your Honor. The Court has to take judicial notice of them, in any event.

The Court: Admitted.

(The copy of 46 C.F.R., Part 95, above referred to, was received in evidence as Respondent Albina's Exhibit 41.)

Mr. Johansen: Our Exhibit 42 is likewise taken from the [20] Code of Federal Regulations. Since Mr. Gearin introduced exhibits setting forth the Code of Federal Regulations, I felt it appropriate to do likewise. Exhibit No. 42 relates to the applicability of the classification of burlap, and other

items here involved, as hazardous articles. This regulation we are offering here is Section 146.27-1, defining a hazardous article, and setting forth the persons upon whom such definition is binding. It is our position this shows that the definition of burlap as a hazardous article is not binding on Albina, and we are offering it for that purpose.

The Court: Admitted.

(Copy of Section 146.27-1 of the Code of Federal Regulations, above referred to, was received in evidence as Respondent Albina's Exhibit 42.)

Mr. Johansen: Our Exhibit No. 43 is an abstract from 46 Code of Federal Regulations, Section 146.02-2 to 146.02-5. This is offered for the same purpose, to show that the Coast Guard regulations introduced by Mr. Gearin, I believe as Exhibit No. 3, prohibiting welding in holds under certain circumstances, likewise have no application to Albina.

The Court: Admitted.

(Copy of 46 C.F.R., Section 146.02-2, etc., above referred to, was received in evidence as Respondent Albina's Exhibit 43.) [21]

Mr. Johansen: Our Exhibit No. 44 is a signed copy of a Survey Report on the damage to the vessel. At this time I understand we are not going into the question of damages in dollars and cents. However, we offer this merely to show the extent and nature of the physical damage.

Mr. Gearin: No objection.

The Court: Admitted.

(The Survey Report above referred to was received in evidence as Respondent Albina's Exhibit 44.)

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RESPONDENT'S EXHIBIT No. 44

United States Salvage Association, Inc.  
99 John Street,  
New York 38, N. Y.

Portland, Oregon,  
April 11, 1958.

Case No. 80-3278.

Fire in No. 5 Hold  
at Portland, Oregon,  
April 2, 1958.

Albina Engine & Machine Wks.—Rep. Lia.  
(S. S. "Robert Luckenbach")

Conditions

All services of this Association are offered and this and all other reports and certificates are issued on the following conditions:

(1) While the officers and the Board of Directors of United States Salvage Association, Inc., have used their best endeavors to select competent surveyors, employees, representatives, and agents and to insure that the functions of the Association

Respondent's Exhibit No. 44—(Continued)

are properly executed, neither the Association nor its officers, directors, surveyors, employees, representatives or agents are under any circumstances whatever to be held responsible for any error of judgment, default or negligence of the Association's surveyors, employees, representatives or agents nor shall the Association or its officers or directors under any circumstances whatever be held responsible for any omission, misrepresentation or misstatement in any report or certificate.

(2) That under no circumstances shall this report or certificate be used in connection with the issuance, purchase, sale or pledge of any security or securities, or in connection with the purchase, sale, mortgage, pledge, freighting, letting, hiring or charter of any vessel, cargo or other property, and if so used this document shall be null, void and of no effect and shall not be binding on anyone.

The terms of these conditions can be varied only by specific resolution of the Board of Directors of the Association and the acceptance or use of the services of the Association or of its surveyors, employees, representatives or agents or the use of this or any other report or certificate shall be construed to be an acceptance of the foregoing conditions.

**This Report Is Exclusively for the Use and  
Information of Underwriters**

Report of Survey made by the undersigned surveyor of the United States Salvage Association,

Respondent's Exhibit No. 44—(Continued)

Inc., on April 2, 4, 6, 7, 8 and 9, 1958, at the request of Jewett, Barton, Leavy and Kern, Portland, Oregon, on the S.S. "Robert Luckenbach" 7882 Gross Tons; 245923 Official Number; Luckenbach Steamship Company, Owners and Operators, J. W. Maitland, Master, while lying afloat and on drydock at Portland, Oregon, in order to ascertain the nature and extent of damage alleged to have been sustained in consequence of fire in No. 5 Lower Hold on April 2, 1958, at 1815. Vessel partially loaded with general cargo.

Attending:

Messrs. H. W. Sterling, representing the Owners; R. S. Brewer, representing Albina Engine and Machine Works; J. R. Bailey, representing Albina Engine and Machine Works; R. H. Connell, Jr., representing American Bureau of Shipping; R. W. Siegel, representing United States Coast Guard; A. E. Hampton, representing United States Coast Guard; J. Slater, representing Pillsbury and Martignoni.

Found:

1. Shell Plating: Port side shell plates F-6 and G-7 distorted between frames 152 and 153. Shell frames Nos. 150, 151, 152 and 153 and 154 distorted from tank top in No. 5 lower hold vertically for a length of 10'. Port side shell stringer distorted from bulkhead 149 to frame 154. Continuity bracket port fwd. No. 5 lower hold distorted.

## Respondent's Exhibit No. 44—(Continued)

## Recommended :

1. Shell Plating: Shell plate G-7 port to be cut out and renewed from original butt at Frame 149½ to newly established butt at Frame 154½. Shell plate F-6 port to be cut out and renewed from newly established butt at frame 151½ to original butt at frame 156½. Shell frames Nos. 150, 151, 152, 153 and 154 to be renewed from bulkhead 149 to frame 155. Continuity bracket to be renewed.

## Found :

2. Forward bulkhead No. 5 Lower Hold: Bulkhead plating distorted from port shell plate to starboard hatch side girder in intermittent locations and varying heights. Bulkhead stiffeners affected.

## Recommended :

2. Forward bulkhead No. 5 Lower Hold. The following sections of bulkhead plating to be cropped out and renewed, forward end of No. 5 Lower hold ;

(a) 1st strake below upper tween deck from port shell inboard for a length of 22'.

(b) 1st strake below upper tween deck from 42" to port of centerline outboard for a length of 56".

(c) 2nd strake below upper tween deck from port shell inboard for a length of 14'.

(d) 2nd strake below upper tween deck from 4" to port of center line outboard for a length of 38" and a width of 56".

Respondent's Exhibit No. 44—(Continued)

(e) 2nd strake below upper tween deck from 42" to stbd. of centerline outboard for a length of 84".

(f) 3rd strake below upper tween deck from port sheel inboard for a length of 10' and a width of 5'.

(g) 3rd strake below upper tween deck from 72" to port of centerline outboard for a length of 64" and a width of 56".

(h) 3rd strake below upper tween deck from 42" to stbd. of centerline outboard for a length of 84" and a width of 36".

(i) Bulkhead stiffeners Nos. 6, 7, 8, 9, 10, 11, to port of centerline to be cut out and renewed for a length of 14'.

Found:

3. Centerline bulkhead forward No. 5 Lower Hold. Centerline bulkhead and stiffeners distorted from bulkhead 149 to pillar at frame 155 in No. 5 lower hold. Attached reach rods and guards affected.

Recommended:

3. Centerline bulkhead No. 5 Lower Hold. Centerline bulkhead and stiffeners to be renewed from bulkhead 149 to pillar at frame 155 in No. 5 lower hold. Reach rods and guards to be removed, repaired and replaced.

Found:

4. No. 5 Tween Deck forward: No. 5 Tween deck plating and beams distorted and set down from bulkhead 149 to hatch end beam and from center-

Respondent's Exhibit No. 44—(Continued)

line outboard to port shell. Hatch end girder face plate distorted for a length of 36". Flange of port hatch side girder distorted for a length of 30".

Recommended:

4. No. 5 Tween Deck forward: No. 5 tween deck beams to be renewed from centerline to port hatch side girder at frames 150, 151, 152 and 153 and from port hatch side girder to port shell at frames 150, 151 and 152. Distorted flanges of girders to be faired. Deck plating to be split, faired and re-welded.

Found:

5. Electrical fixtures and circuits: Wiring and fixtures for 6 lighting circuits and one receptacle circuit burned and overheated forward end No. 5 lower hold and tween deck.

Recommended:

5. Electrical fixtures and circuits: Renew electrical wiring from panel in mast house as follows:

From panel to light fixture—No. 4 upper tween deck stbd.

From panel to light fixture—No. 4 upper tween deck port.

From panel to light fixture—No. 4 lower tween deck port.

From panel to light fixture—No. 4 lower tween deck stbd.

From panel to light fixture—No. 5 lower hold port.



Respondent's Exhibit No. 44—(Continued)

From panel to light fixture—No. 5 lower hold starboard.

From panel to receptacles in No. 4 and No. 5 LH. Repair nine fixtures with new sockets, bulbs and glass.

Found:

6. Cargo Battens: Approximately 200 lineal feet of 2 x 6 cargo battens and 400 feet of 1" vertical side shell sheathing burned and destroyed port side forward No. 5 Lower Hold.

Recommended:

6. Cargo Battens: Approximately 200' of 2 x 6 cargo batten and 400' of 1" vertical sheathing to be renewed.

Notes:

(a) Provide necessary drydocking to accomplish side shell repairs.

(b) All interference in way of repairs to be removed and replaced.

(c) No. 5 port deep tank to be cleaned and gas free certificate furnished.

(d) Necessary staging to be furnished, installed and removed.

(e) All repairs to be tested to satisfaction of Regulatory Bodies.

(f) No. 5 and No. 4 cargo spaces to be deodorized to remove smoke odors.

## Respondent's Exhibit No. 44—(Continued)

(g) Fire debris from fwd. end of landing pad No. 5 lower hold to be cleared.

(h) All new and disturbed areas to be recoated and cargo spaces left clean and ready for cargo.

(i) No. 4 and No. 5 cargo spaces, bilges and bilge strainers to be cleared of water and fire debris.

The above listed items were prepared by the Owner's representative and work was taken in hand by Albina Engine and Machine Works on a time and material basis. After completion of repairs, the Owner's representative along with a representative of Albina Engine and Machine Works and the undersigned, examined time cards and material receipts, after which Albina Engine and Machine Works presented the following charges:

## Actual Straight Time Charges on Time and Material Basis, Without Profit:

Labor—2,728 hours @ \$3.01.....	\$ 8,211.28
Labor—@ 60% overhead.....	4,926.77
Material and purchases.....	3,401.11
Port of Portland Charges, 2½ days Dry-docking plus 456 long tons cargo.....	2,870.35
Crane—53½ hours @ \$10.00.....	535.00
Air—33½ hours @ \$5.00.....	167.50
Water .....	22.26
Electric Power .....	239.87
Skip Rental .....	4.00
Plug Box Rental.....	12.00
Labor to connect and disconnect power...	32.10
<b>Total .....</b>	<b>\$20,422.24</b>

Respondent's Exhibit No. 44—(Continued)

Overtime Charges:

Labor: 2,059 hours @ \$3.50.....	\$7,206.50
Port of Portland Charges:	
Docking and Undocking .....	928.05
Cranes 531½ hours @ \$6.00.....	321.00
Air 8 hours @ \$3.00.....	24.00
Labor to Connect and Disconnect.....	32.10
	\$8,511.65
	\$8,511.65
Straight time Charges.....	\$20,422.24
Overtime Charges.....	8,511.65
	\$28,933.89

Overtime Rate is double time.

This straight time charge of \$20,422.24 includes \$2,870.35 drydocking and a scrap credit allowance of \$235.00 but exclusive of Bonus charge of \$8,511.65. This straight time charge of \$20,422.24 being considered fair and reasonable was approved by the undersigned without prejudice to Underwriters liability and subject to adjustment. The Bonus time charge of \$8,511.65 was approved for cost only, as the overtime did not save any drydocking charge but did save 72 hours demurrage on the vessel.

Drydocking 2½ days plus 456 long tons cargo—\$2,870.35.

## Respondent's Exhibit No. 44—(Continued)

While the vessel was on drydock the Contractor provided the following services:

## Fire Line:

Hook up and Disconnection.....\$20.00

## Fresh Water:

Hook up and Disconnection.....None

Supply .....None

## Electricity:

Hook up and Disconnection.....\$32.10

Supply ..... 65.00

## Steam:

Hook up and Disconnection.....None

Supply .....None

## Garbage Removal:

Service .....None

The vessel was placed on drydock at this time April 4, 1958, to survey and effect this side shell plating repair; and no other work was carried out except bottom painting which was not necessary for the seaworthiness of the vessel and also the fairing of two slight nicks in the propeller blade which could have been carried out afloat.

Vessel was placed on drydock at 7:30 a.m. April 4, 1958.

Vessel was undocked at 4:45 a.m. April 7, 1958.

Vessel was last previously drydocked on March 7, 1958, at Chester, Pa. Log books were not examined back to that date.

Respondent's Exhibit No. 44—(Continued)

Repairs were checked, found carried out according to survey and all work done as specified.

/s/ K. A. WEBB,  
Surveyor.

Received in evidence January 6, 1960.

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Mr. Johansen: Our Exhibit 45 is likewise a signed copy of a Survey Report of cargo damage, which we offer for the same purpose, to show the nature of the damage to the cargo.

Mr. Gearin: We object on the part of cargo, your Honor. The pretrial order provides in Paragraphs I and II that the cargo was aboard the vessel and it was damaged. We have reserved the issue of the amount of damage. I don't see the applicability of an independent surveyor not connected with us giving his opinion at this time as far as the amount of damage is concerned.

Mr. Johansen: Your Honor, in some instances—not all instances—this shows where the various items of cargo were located in the ship, some of it in No. 4 and some of it in No. 5.

The Court: Is that the only purpose of the offer? [22]

Mr. Johansen: We can limit it to that purpose at this time, your Honor, if it is deemed proper to do so.

The Court: Of course, the same question arises on this. The witness is not here for cross-examina-

tion. His idea of the amount of damage would not be binding on either Mr. Wood's client or Mr. Gearin's clients. I would have to reject the offer unless it was limited to something that Counsel would be agreeable to. If it shows the different places where the cargo was stored, maybe Counsel would have no objection to it.

Mr. Gearin: This survey was made, your Honor, according to the terms of it, starting the day after the fire, three days after the fire and eight days after the fire, at a time when most of this cargo had been removed from the vessel.

The Court: As long as you have an objection, I will reject the offer. That is No. 45.

Mr. Wood, I am not sure that I recognized you during the course of the admission of these last exhibits in evidence. You have no objection; is that correct?

Mr. Wood: Not to those that were admitted.

The Court: Yes. Mr. Johansen, do you have anything more to offer in your case?

Mr. Johansen: We have no further exhibits to offer at this time, your Honor. We do intend to call some witnesses. However, we did not anticipate the case would move along this rapidly. We have arranged for them to be here this afternoon. [23]

The Court: Could you have your witnesses here by 1:30?

Mr. Johansen: Yes, we could.

The Court: Is there anything more that we can do at this time?

Mr. Krause: Your Honor, could we have a plan?

I take it that the transcript is not going to be read here in court?

The Court: I will take that up with you. I want to get your ideas on that, Gentlemen. I am here, of course, to hear the reading of the transcript, and if there are any particular parts of the transcript that you would like to emphasize by reading, certainly I feel it is a proper thing to do. On the other hand, of course I will read the transcript if it is not all read here in court. I will read it anyway.

Mr. Krause: Of course, it will be a little difficult to argue the case to the Court unless the Court has read the transcript. I am wondering whether as far as the testimony is concerned that we are going to put on—they are mostly witnesses who have testified in the Coast Guard hearing, and they are only going to testify to matters that were not covered there. If the Court had already read the testimony, it might better appear just how this other testimony will affect the case. I was going to suggest that we adjourn long enough so that the Court could read the transcript before we go on any farther. That might mean the afternoon, I suppose.

The Court: That probably would mean the afternoon. I [24] think, Gentlemen, we had better just proceed. I think I probably can put it together. However, I assume that you gentlemen will want to file some briefs in reply to the brief which has been filed by Mr. Gearin. I don't mean to say that by going ahead this afternoon I am absolutely foreclosing any possible future testimony if it does come up, and you have so stipulated in your pretrial

order. So any time before the closing briefs are filed, if it seems important enough, of course, we could take other testimony.

Mr. Wood, if you file the next brief after we finish here, how much time would you want in which to file your brief?

Mr. Wood: My brief in reply to Mr. Gearin's?

The Court: Yes.

Mr. Wood: I think it would depend a little bit on the testimony he is going to introduce, but I would say a week.

The Court: And then, Mr. Krause, you could reply to both briefs?

Mr. Krause: Yes.

The Court: You would probably want a week or ten days?

Mr. Krause: Not over a week, anyway.

The Court: And then, of course, you would have an opportunity to reply to Mr. Krause's brief.

Mr. Wood: Yes, your Honor.

The Court: And you likewise, so we could take a week for the replies there. [25]

Mr. Gearin: Yes, your Honor.

(Whereupon a recess was taken until 1:30 p.m. of the same day, at which time Court reconvened and proceedings herein were resumed as follows:)

The Court: I think, Mr. Krause, you were going to call some witnesses; is that correct?

Mr. Krause: Yes. We will call Mr. Richard Brewer. [26]



RICHARD BREWER

was produced as a witness in behalf of Respondent Albina Engine & Machine Works, and, having been first duly sworn, was examined and testified as follows.

Direct Examination

By Mr. Krause:

Q. Will you state your name, please?

A. Richard Brewer.

Q. Where do you live?           A. In Portland.

Q. How long have you been a resident of Portland?           A. For fourteen years.

Q. What is your business or occupation?

A. I am a Superintendent for Albina Engine & Machine Works.

Q. What business is Albina in?

A. My particular phase is ship repair.

Q. They also do some ship construction, do they?

A. Yes.

Q. But your job is in connection with ship repair?           A. Yes.

Q. Have Luckenbach Steamship Company during the years that you have been with Albina had occasion to have ships repaired by Albina?

A. Quite frequently.

Q. And you have frequently worked on them yourself, have you? [27]           A. Yes, sir.

Q. Tell us just what you had to do with the making of the repairs on the Robert Luckenbach about April 2nd, 1958.

A. I was told that they had some voyage repairs,

(Testimony of Richard Brewer.)

so I went up to the ship and met Mr. Sterling, who told me what repairs they wanted to make.

Q. What day was that, do you recall?

A. No, I don't.

Q. If the fire was on April 2nd, 1958, was it that same day?      A. Yes, sir; it was that morning.

Q. About what time of day?

A. As nearly as I can remember, it would have been about 9:00 o'clock in the morning.

Q. You went aboard the vessel?      A. Yes.

Q. Where was the ship lying?

A. At Luckenbach Terminal in Portland.

Q. Do you recall which side of the vessel was against the dock?      A. The port side.

Q. There you met a Mr. Sterling. What is his first name?      A. Herb.

Q. How long had you known Herb Sterling?

A. Oh, I would say about twelve years.

Q. What position did he hold with the Luckenbach Company? [28]

A. He was their Northwest Port Engineer.

Q. Had he been in that same position during the fifteen years that you knew him, or had he held other positions?

A. No, he had been in that same position, to my knowledge.

Q. Did you know a Port Engineer by the name of Ramey?      A. Yes.

Q. Did you have the same relations with Mr. Ramey that you later had with Mr. Sterling?

A. Well, Mr. Ramey was their Superintendent

(Testimony of Richard Brewer.)

for the entire area which they serve, where Mr. Sterling was the Northwest area Port Engineer.

Q. Did Mr. Sterling have an assistant, too?

A. Yes.

Q. Do you remember his name?

A. A Mr. Saunders.

Q. Was Mr. Saunders down on the Robert Luckenbach on this morning of April 2nd, 1958, also?

A. No, he was not.

Q. Mr. Sterling was there?

A. Yes, sir.

Q. Will you tell us what repairs were ordered and who ordered them?

A. As I remember it, there was about eight items that Mr. Sterling ordered us to do, out of which there were two that I can remember the exact details as to what they were. [29]

Q. What are the two that you remember?

A. Well, one involved removing a section of fire line to be renewed and the other one was renewing a ladder rung in a cargo hold.

Q. In which hold? A. No. 5 cargo hold.

Q. When Mr. Sterling ordered these repairs where were you and he?

A. In the Chief Engineer's room. That is where I met him.

Q. The Chief Engineer of the Robert Luckenbach? A. Yes.

Q. Who else was there?

A. The Chief Engineer was in and out. I think he was there most of the time we were discussing

(Testimony of Richard Brewer.)

the repairs, and I believe he also sent for the Chief Mate to discuss a few items with him.

Q. Are you acquainted with Mr. Radovich?

A. Yes.

Q. Was he employed by the Luckenbach Company at that time? A. Yes, he was.

Q. In what capacity?

A. Well, his title was Marine Superintendent, I believe. He seemed to be in charge of loading the ships and discharging them.

Q. Was Mr. Radovich present also at the time these repairs [30] were ordered?

A. He was there at some time during the conversation.

Q. As nearly as you can recall, will you tell us just what Mr. Sterling said and what the conversation was with respect to these repairs at that time.

A. Well, we discussed removing this section of the fire line for the renewal, and he asked the Chief how he could maintain fire protection on the vessel, and he said—

Mr. Gearin: Just a moment, your Honor. We have no objection to statements made by Mr. Sterling, the Port Engineer of Luckenbach, but we think that statements made by the Chief Engineer would be hearsay.

The Court: What is your position on that, Mr. Krause?

Mr. Krause: These were conversations of employees of Luckenbach Company with Mr. Brewer,

(Testimony of Richard Brewer.)

and this was the conversation that took place during the time that orders were given regarding the removal of the section of fire line. What the Chief Engineer said——

The Court: Would that be said in the presence of Mr. Sterling?

The Witness: Yes, they were all three together.

The Court: Yes. The objection is overruled.

Q. (By Mr. Krause:) You were saying what the Chief Engineer said.

A. He told Mr. Sterling in my presence that he would see our [31] pipefitters would install blanks in the lines so that he could maintain fire protection on the vessel.

Q. Where was this section of pipe in the fire line that was to be removed?

A. It was in the upper engine room.

Q. Was that a pipe that came up from the engine room to the main deck? A. Yes.

Q. What was it there for? That is, when it was in place what did it provide?

A. It provided for water from the fire pump to reach the main deck.

Q. On the main deck were there hydrants to which hoses could be connected? A. Yes.

Q. You said something about placing some blanks after that section of pipe was removed. What are those blanks?

A. Well, they are steel blanks put on with rubber gaskets and forming a watertight joint.

Q. Where were those blanks to be put?

(Testimony of Richard Brewer.)

A. They were to be placed at each end where this section was removed so that he could have fire protection in the engine room from the fire pump, and also he could put a line from the dock onto the ship and maintain fire protection on the deck of the vessel. [32]

The Court: You are speaking of the Chief Engineer. Whom do you refer to as the Chief Engineer?

A. The Chief Engineer of the Robert Luckenbach. I don't recall him by name, sir.

Q. (By Mr. Krause): Do you know whether that pipe was removed, of your own knowledge, that section of the fire line?

A. I didn't actually see it removed; no, sir.

Q. Did you see whether it had been removed after it was removed?

A. That I can't remember.

Q. Then you can't tell us whether these blanks were put on the pipe or not?

A. No, sir; I couldn't.

Q. Now, you mentioned another job that Mr. Sterling directed you to do with respect to a rung in a ladder?

A. Yes, he asked us to renew a missing ladder rung which the Chief Officer had told him was the after-ladder in No. 5 cargo hold.

Q. Did you and Mr. Sterling and any of the other officers of the ship go out to No. 5 hatch to see where that rung was missing?

(Testimony of Richard Brewer.)

A. Mr. Sterling and Mr. Radovich and myself and Mr. Bailey went to No. 5 hatch and looked down to see what the conditions were as far as being practical to renew the rung. Mr. Radovich assured us that the cargo would be out of the after end of No. 5 [33] hold and the way of the ladder by 6:00 o'clock that night, at which time he wanted us to renew it.

The Court: Was Mr. Sterling present when this was said?

A. Yes, he was.

Q. (By Mr. Krause): Is Mr. Radovich this man that you designated as Marine Superintendent?

A. Yes.

Q. Now, you have mentioned Mr. Bailey. Who was he?

A. Mr. Bailey takes care of all of our outside work. My normal work is taking care of Swan Island. That is my job, and he takes care of work that is done away from Swan Island. I was filling in for him that morning.

Q. But he arrived before you had left?

A. Yes.

Q. So he was with you at the No. 5 hatch?

A. Yes.

Q. Did you remain on the vessel after that or did you leave?      A. No, I left.

Q. By the way, were these orders for the work that you were to do in writing, or were they oral?

A. They were oral.

(Testimony of Richard Brewer.)

Q. What was the practice regarding the method of authorization of repairs?

A. For that type of repairs it is very normal they are done orally. [34]

Q. On occasions did you get written orders regarding repairs?

A. On occasions. For jobs that they know quite a bit ahead of time that they had to do, they would write up repairs, but these normal voyage repairs, normally they don't know what has to be done until the ship arrives.

Q. When these orders for repairs had been given to you orally were they customarily followed with a written order after you had done the work?

A. Yes, definitely.

Q. Were you on the ship at the time the fire started? A. No, I wasn't.

Q. Were you on there at any time after the fire had started?

A. Yes, I was there later on that night, after the fire was practically out.

Q. The Fire Department were still there?

A. Yes.

Q. Did you participate in the matter of ascertaining what damage had been done to the vessel?

A. Yes, I did.

Q. With whom did you make the survey as to the damage and the type of repairs that would be required?

A. Well, of course, there was the American Bureau of Shipping and the Coast Guard and the



(Testimony of Richard Brewer.)

owner's representatives, who, as I remember, were Mr. Sterling and Mr. Saunders and Mr. Arway, who takes care of their electrical work. [35]

Q. He takes care of Luckenbach Company's electrical work?           A. Right.

Q. Any other man representing Albina besides yourself?

A. Yes. Mr. Bailey was there, and our steel boss and I believe our electrical boss was there, also.

Q. When were these surveys made as to the work that would be necessary to be done?

A. A preliminary survey was made the following morning, but it wasn't completed, of course, until all the cargo had been removed. I don't recall just how long that took, but I believe it was about two days.

Q. Can you tell us just generally what damage there was to the vessel?

A. Well, the bulkhead plate between 4 and 5 cargo holds was warped. I don't recall just how much of it. And I would guess approximately 50 per cent of the landing pads were burned and the cargo battens were burned.

Q. These landing pads, what are they?

A. A landing pad is a wooden—there is two 3-inch layers of wood that are placed underneath the square of the open hatch so that when cargo is lowered into the cargo hold it doesn't damage this steel plating under the landing pad.

Q. Is the floor or the lower part of the No. 5 hold over the shaft alley where the propeller shaft is?

(Testimony of Richard Brewer.)

A. Yes. [36]

Q. These boards that were in the square of the hatch of No. 5, what were they placed on?

A. They were placed on the steel deck, and then there is a steel guardrail that surrounds them to keep them in place.

Q. Does that wooden landing pad extend forward or aft from the square of the hatch?

A. No, generally it is the same size as the hatch opening.

Q. You also spoke of cargo battens. Where were they?

A. They are 2 by 6 lumber that is placed against the side of the ship to prevent the cargo from resting against the side of the ship.

The Court: Is that shown in this Exhibit 25-A?

A. Yes.

The Court: That is the batten on the side there?

The Witness: There is the batten on the side. The landing pad is covered with the dunnage.

The Court: What do you mean by the square of the hatch? That is the opening——

A. That is the hatch opening.

The Court: Yes.

Q. (By Mr. Krause): You were referring to Exhibits 25-A and 25-B at this time? A. Yes.

Q. Was there any damage to the plating of the ship, the hull plating? [37]

A. That I don't remember.

Q. Were you on the ship when the fire was finally extinguished? A. Yes.

(Testimony of Richard Brewer.)

Q. Can you tell us about what time that was?

A. As I recall, it must have been around 11:00 p.m., but I wouldn't be sure.

Q. Who advised you as to at what time the work was to be done in the hold?      A. Mr. Radovich.

Q. Mr. Radovich?      A. Yes.

Q. And that was during the dinner hour from 6:00 to 7:00?

A. Yes, when the longshoremen were off to eat.

Q. In connection with the doing of the work in the hold of the ship and where it is necessary to remove cargo, who in the past, when you were working on the Luckenbach ships, arranged for the removal of cargo?

A. Well, that would be arranged through Mr. Radovich.

Q. In this case who did arrange for the removal of the cargo about the ladder where you were supposed to do the welding?

A. Mr. Radovich.

Mr. Krause: You may cross-examine.

Mr. Gearin: You asked the name of the Chief Engineer. It was George Hebert. [38]

#### Cross-Examination

By Mr. Gearin:

Q. Mr. Brewer, you spoke of Mr. Radovich. Would that be Mr. Stanley M. Radovich? Do you know his given name?

A. I know his first name is Stanley.

Q. All right. To your knowledge, how long has

(Testimony of Richard Brewer.)

he held or occupied the position of Marine Superintendent for Luckenbach Steamship Company?

A. I wouldn't say for sure, but I would say approximately three years; maybe four.

Q. In the three or possibly four years that you have known Mr. Radovich occupied the position of Marine Superintendent with Luckenbach Steamship Company had he on any occasions ordered from Albina Engine & Machine Works any minor repairs aboard the vessel?

A. He may possibly have ordered some from Albina. My contact with Mr. Radovich was quite narrow compared to our other employees.

Q. You mentioned Mr. Bailey. Is that Richard Bailey?           A. Yes.

Q. What is his position with Albina?

A. He is Superintendent. He takes care of our repairs on the waterfront.

Q. From your observations of Mr. Radovich's capacity with Luckenbach Steamship Company can you advise us whether or not [39] Mr. Radovich occupies any supervisory capacity, to your knowledge?

Mr. Wood: I think that calls for a conclusion, your Honor.

The Court: I am certainly inclined to sustain that unless——

Mr. Gearin: I will withdraw it.

The Court: ——unless you can show some difference in admiralty law here.

Mr. Gearin: I will ask a specific question.

Q. During this conversation between the Chief

(Testimony of Richard Brewer.)

Engineer Hebert and Mr. Sterling about the removal of the fire line and Mr. Hebert's statements something about fire protection, was Mr. Radovich present at that time?

A. That I couldn't say.

Q. You have no memory of it?

A. No, I don't have any memory.

Q. Insofar as fire protection on the waterfront in a vessel, is that necessary aboard a vessel during welding? Was fire protection necessary aboard a vessel during welding in the hold?

A. We considered it to be so, and we assume that it is available on a ship when we work on it.

Q. Mr. Brewer, insofar as this particular vessel on this particular day when the repairs were performed, did you have in mind any particular type of fire protection during the [40] conversation with Chief Engineer Hebert and Mr. Sterling?

A. No, I personally did not.

Q. You didn't know what alternative methods were or were not going to be supplied by the ship?

A. No.

Q. At a time when you went back to look at Hold No. 5—I understand that Mr. Sterling was there, Mr. Radovich, Mr. Bailey and yourself?

A. Right.

Q. And that had to do with the repairs to the ladder in Hold No. 5?      A. Right.

Q. I will ask you did Mr. Radovich participate at all in the discussions that you had in the after part of the vessel about the repairs in No. 5? Per-

(Testimony of Richard Brewer.)

haps that question is a little complicated in form. I am going to rephrase it if I may, sir. At the time that you and Mr. Bailey and Mr. Sterling and Mr. Radovich went to the aft portion of the vessel, where Hold No. 5 is located, at that time did Mr. Radovich participate in any of the discussions regarding the repair work to be done in the hold?

A. Well, he said that the cargo would be out by the after ladder.

Mr. Wood: I didn't hear what he said.

A. He said the cargo would be out by 6:00 o'clock that night [41] in the way of the repair.

Q. (By Mr. Gearin): I believe you testified that Mr. Radovich gave you advice when the work was to be completed in Hold No. 5?

Mr. Wood: You mean to remove the cargo, don't you?

Mr. Gearin: I will ask that you read the question, Mr. Beckwith.

(Last question read.)

A. Yes, he said that it should be done between 6:00 and 7:00 p.m. that evening.

Q. And the work in Hold No. 5 was the repair of a ladder rung? A. Yes.

Q. Will you state whether or not at that time it was known whether or not welding was to be employed in the repair of the ladder in Hold No. 5?

A. Yes, it was known.

Q. Insofar as the past experience with Luckenbach is concerned, am I correct, sir, in understand-

(Testimony of Richard Brewer.)

ing your testimony that insofar as work to be performed by Albina in holds of vessels of the Luckenbach Steamship Company that Mr. Radovich made the arrangements for the removal of the cargo in the holds in which Albina was to work? Do you want me to ask that question in a different form? Is that a little complicated?

A. Okeh, if you will.

Q. I can ask a non-leading question, I presume. Who made [42] arrangements for the removal of the cargo aboard Luckenbach Steamship Company vessels when Albina had to go into the holds and do repair work?

A. Mr. Radovich.

Mr. Gearin: I have nothing further. Thank you, sir.

Cross-Examination

By Mr. Wood:

Q. Mr. Brewer, I think your evidence is pretty plain, but I would like to clarify it, possibly. All this talk about the repair of a ladder, when you and Mr. Sterling and Mr. Bailey and Mr. Radovich were leaning over the hatch coaming and looking down into No. 5 hold, all that talk contemplated the repair of the after ladder, didn't it?

A. Yes, sir.

Q. That is all you were talking about?

A. Yes, sir.

Q. Radovich's only participation in that was that he would have the cargo removed from the after ladder in time to do the work there between 6:00 and 7:00, isn't that right?

A. Yes.

(Testimony of Richard Brewer.)

Q. There has been a lot made of Mr. Radovich here. Isn't it a fact that his only functions on that dock, so far as you know, were to handle cargo in and out of the ship, hire longshoremen gangs and see that the cargo was stored or the cargo discharged, [43] as the case may be? Wasn't that his job?

A. I would assume so. I am not personally concerned with his responsibilities.

Q. But so far as you know, that was his job?

A. My contact with him was not too great.

Q. And all contracts for repairs between Luckenbach and your company were between your company and Sterling, weren't they?

A. Or another Port Engineer.

Q. Never Mr. Radovich? A. No.

Q. Now, just one more question or series of questions on the same subject. You described the damages to the ship caused by the fire and the conference that the Albina people, including yourself, had with Mr. Sterling afterwards about the repair of that damage. Is it a fact that you or Albina's representatives acknowledged to Mr. Sterling that the fault for the fire was Albina's, the damages were their responsibility, and they were going to repair it without charge to Luckenbach?

Mr. Krause: Just a moment. Your Honor, of course, that would be going into a subject that he wasn't examined on at all. But I think if the question is permitted at all it ought to be split up so that he wouldn't have to answer a question that is



(Testimony of Richard Brewer.)

loaded. I mean he could say Yes or No to various parts of it without being at all wrong and we wouldn't have much of an understanding of his answer. The question has got too many [44] factors in it.

The Court: I think, Mr. Wood, that it could require at least three different answers. I think if you would reframe your question that would overcome that part of the objection, and I will overrule the other part.

Mr. Wood: Yes, I will, your Honor.

Q. Mr. Brewer, you were present, were you not, at these conferences between Sterling and your people about repairing the fire damage, weren't you?

A. Yes, as to the work that was to be accomplished; yes.

Q. The work that was to be done?

A. Yes.

Q. Was Mr. Hussa present? A. No.

Q. Who was present representing your company?

A. As far as the actual work that was to be done, most of those conferences were held right on the ship. I was there, Mr. Bailey was there, and I think our estimator was there.

Q. And Mr. Sterling?

A. And Mr. Sterling.

Q. I think I will have to ask you individually, then. I don't know whether you were in a position of authority, or perhaps it was some of these other men. Did you say to Sterling that your company

(Testimony of Richard Brewer.)

would assume responsibility for the damage and repair it? [45]

A. No, I didn't have any authority for that.

Mr. Krause: Your Honor——

The Court: The question has been answered. He said No.

Q. (By Mr. Wood): Did Mr. Bailey do that?

A. No.

Q. (By Mr. Wood): Did Mr. Bailey do that?

A. No.

Q. Did any of your company within your hearing do that?

A. Not to my personal knowledge.

Q. Do you know whether Mr. Hussa did that?

A. No, sir; I don't.

Q. Mr. Hussa is the President of your company, isn't he? A. Yes, he is.

Q. Do you know this, that your company made those repairs and then billed Luckenbach for them at bare cost without any charge for profit or overhead or anything like that?

A. No, I didn't know that.

Mr. Wood: I guess I have pumped you dry. That is all.

### Redirect Examination

By Mr. Krause:

Q. You had been told that this rung was in the after ladder? A. Yes.

Q. Were you advised later that it was in the forward ladder instead of the after ladder? [46]

(Testimony of Richard Brewer.)

A. Yes.

Q. Who told you about it?

A. Mr. Radovich.

Q. Where were you at the time he told you?

A. I was in our office at Swan Island, and he called me on the phone.

Q. Just what did he tell you?

A. He said to go ahead and repair the ladder between 6:00 and 7:00 that evening; however, it was the forward ladder instead of the after ladder.

Q. Was anything more said about whether the cargo would be removed from the base of the ladder at that time?

A. No, nothing was mentioned.

Mr. Krause: You may examine.

Mr. Gearin: I have no questions.

#### Recross-Examination

By Mr. Wood:

Q. I think there is a slight distinction there, possibly. Mr. Radovich told you, as I understand your testimony, that the rung was in the forward ladder. That is right, is it?      A. Yes.

Q. And if any repair was to be made, that was the place where it was. I suppose that was generally the conversation, was it? [47]      A. Yes.

Q. But he didn't order you or give you any instructions to go ahead and repair it, did he?

A. No. He said to make the repair—

Q. Didn't you know that he had no authority to order the repairs?

(Testimony of Richard Brewer.)

Mr. Gearin: We object to the question, your Honor.

Mr. Wood: I want to ask him.

The Court: I guess I have to decide that eventually, anyway.

Mr. Gearin: I will withdraw my objection, your Honor.

Q. (By Mr. Wood): You know that, don't you?

A. Whether or not he had authority to order repairs or not?

Q. Yes.

A. We frequently looked to him as to the time that we could do them. I mean it was up to him when the space would be available.

Q. But he didn't give you any specific order or instruction to go ahead and repair that ladder, did he?

A. It happened just the way I stated it. Whether it was an order or not, he said—

Q. Isn't it a fact all he told you was that it was the forward ladder that had the broken rung in it?

A. Yes, sir.

Q. That is all he told you? [48]

A. Correct.

Mr. Wood: That is all.

Q. (By Mr. Gearin): Mr. Brewer, you knew that a ladder was to be repaired in Hold No. 5?

A. Yes.

Q. And when he called you up was there any

(Testimony of Richard Brewer.)

understanding about why he—strike that. I don't want to ask a leading question, your Honor.

The Court: It is obvious why he called.

Mr. Gearin: All right. I have nothing further.

Mr. Krause: I think that is all.

The Court: I have this one question: Is there any other feasible method for the repair of this rung other than by welding?

A. No. A temporary rung was there, and they wanted to take the temporary rung out and put a permanent rung in.

The Court: And that would require welding?

A. Yes, definitely.

The Court: When you say it would require welding, would it be this particular type of welding, or would there be a different type welding—

A. No, this would be the only feasible type.

The Court: That is all.

(Witness excused.) [49]

### J. R. BAILEY

was produced as a witness in behalf of Albina Engine & Machine Works and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Krause:

Q. Your name is J. R. Bailey?

A. Yes, sir.

Q. Where do you live?

(Testimony of J. R. Bailey.)

A. In Portland.

Q. How long have you been a resident of Portland?  
A. Forty years.

Q. Whom are you employed by?

A. Albina Engine & Machine.

Q. How long have you been employed by them?

A. Eighteen years.

Q. What is your present capacity?

A. I am superintendent of the ship repair department.

Q. Did you have that same position on April 2nd of 1958?  
A. Yes.

Q. Have you frequently worked on Luckenbach vessels?  
A. Yes.

Q. The Luckenbach vessels were regular visitors in the Columbia River, were they?

A. Yes, sir.

Q. And frequently Albina made repairs on them? [50]  
A. Right.

Q. Would you tell us during the several years prior to this fire, Mr. Bailey, just what did you have to do with receiving orders for repairs on the Luckenbach ships? Tell us how they were given and who gave them.

A. Quite often they came in the mail in writing, and quite often they were phoned from Seattle. Quite often they were given verbally by the port engineer after the vessel was there and we were working on it on other repairs.

Q. Who wrote those letters from Seattle?

(Testimony of J. R. Bailey.)

A. Either Mr. Saunders or Mr. Sterling that I know of.

Q. Who was Mr. Sterling?

A. Mr. Sterling was the port engineer. I was best acquainted with him.

Q. He was the port engineer. What was Mr. Sterling's position?

A. Well, he was port engineer in charge of the repair work in Washington and Oregon districts, I believe, but there was another man that handled California.

Q. You are speaking of Mr. Ramey, are you?

A. No. I never had any acquaintance with those people.

Q. At any rate, here in Oregon and Washington Mr. Sterling held that position?

A. That is my understanding of it.

Q. Now, who is Mr. Saunders?

A. Well, he also was a port engineer and I think Mr. Sterling's [51] assistant.

Q. You say when the letters came from Seattle they came from either Sterling or Saunders?

A. Yes, as far as I know.

Q. When they came by telephone whom did you get the orders from?

A. Well, that was pretty nearly always Mr. Sterling. I don't recall Mr. Saunders ever calling work down to us.

Q. Besides Mr. Sterling and Mr. Saunders were there any other men that ever gave you orders regarding repairs?

(Testimony of J. R. Bailey.)

A. Well, Mr. Arway did as regarding electrical work.

Q. When the orders were given to you orally where was that usually done?

A. You mean on board the ship? I mean usually on board the ship after we had seen there was other work that needed doing.

Q. You would be on board the ship and you would meet there with whom? Who would meet there on the ship?

A. Well, if there was a port engineer—if there was a job that a port engineer came down on we would meet the port engineer on the ship.

Q. That would be either Sterling or Saunders?

A. Yes.

Q. Then these orders that you would get on the ship for repairs, how were they usually given? Would they write out any order there or would they give it to you orally? [52]

A. Oh, they always gave it to us orally first, but after they had a chance to look at it themselves, quite often the same day—sometimes the next day—they would have written it down in form.

Q. Then you would get a written work order?

A. Usually by the time the job was done.

Q. When did you get onto the Robert Luckenbach on the morning of the 2nd of April, 1958?

A. As I recall, around 11:00 in the morning.

Q. Was Mr. Brewer already there?

A. Yes.



(Testimony of J. R. Bailey.)

Q. When you got there? A. Yes.

Q. Now, who else did you see there and have dealings with regarding repairs to the vessel?

A. Well, by that time the work was all in hand, and Mr. Brewer told me what work was in hand and what jobs we had to do on the ship.

Q. When Mr. Brewer told you that, who was there?

A. Oh, he was with Mr. Sterling when I met him on the ship.

Q. Then Mr. Brewer already knew what was to be done? A. Yes.

Q. Did you go to No. 5 hatch? A. Yes.

Q. Where you were shown what ladder this rung was missing from? [53]

A. Yes, we went to No. 5 hatch to look for this rung that was missing. In fact, I believe as I came aboard they were on their way to No. 5 hatch.

Q. You joined them there? A. Yes.

Q. Who was there?

A. Mr. Bailey and Mr. Sterling and Mr. Rado-  
vich.

Q. Any of the officers of the ship?

A. Not certainly the mate, because we went back to hunt for the mate later.

Q. Do you recall any other officer?

A. No, I don't.

Q. Then at that time, when you looked down in the No. 5 hatch what was the condition of the cargo in the hatch with respect to the ladder, the after ladder?

(Testimony of J. R. Bailey.)

A. Only the after end of the hatch was uncovered to the lower hold, and the after ladder was—the lower hold was covered with conduit and we couldn't tell how high up—there was no place that a tank top was exposed so we could judge how deep the conduit was, but through the after section of the landing pad, approximately a third, and on under the coaming as nearly as we could tell was all conduit and pipe.

Q. Did you see any part of the ladder where there was a rung missing?

A. No, I didn't. [54]

Q. So at that time, at any rate, you understood that you were to repair or replace a rung in the after ladder?      A. Yes.

Q. Now, did you receive any instructions to the effect that the rung was not to be put into the after ladder?

A. Not at that time. Later in the day, yes.

Q. When did you get the orders?

A. It must have been about 4:00 in the afternoon. It was late in the afternoon.

Q. Who advised you then that the rung was in the forward ladder?      A. Mr. Brewer.

Q. Mr. Brewer did that?      A. Yes.

Q. Did another of the jobs that you were to do have to do with this pipe in the engine-room fire line?      A. Yes.

Q. Who provided the crews that were to take care of that?

(Testimony of J. R. Bailey.)

A. You mean the pipefitters?

Q. Yes, the pipefitter crew.

A. Well, Beck had already been called. However, they came after I was on board the ship.

Q. Were they under your direction, too, the pipe crew?      A. Yes.

Q. What was the name of the foreman? [55]

A. Beck.

Q. Of the pipefitter crew?      A. Yes.

Q. Mr. Beck. Did you see the pipe removed?

A. Yes.

Q. Did you see what they had done to the ends of the pipe where they had taken this section out?

A. Yes, sir.

Q. What did they do to it?

A. They blanked it with steel blanks and rubber gaskets, both ends.

Q. Was that blank there to make it watertight?

A. Yes, sir.

Q. By the way, had you had any conversation with anyone representing the Luckenbach Company as to how fire protection was to be maintained while that section of pipe was out?

A. No, sir.

Q. You didn't. Do you remember whether there are any fire hydrants on the dock of the Luckenbach Company in the vicinity of where the vessel was docked?      A. Yes, sir.

Q. Are you familiar with the connections, the couplings, where they hook up the fresh water from shore to their fresh water tanks?

(Testimony of J. R. Bailey.)

A. Yes, sir. I am familiar with it on the Robert Luckenbach, [56] anyway.

Q. And also where the coupling to hook up the shore water to their fire line is? A. Yes, sir.

Q. Could you tell us where those couplings were with respect to the gangplank going ashore?

A. They are almost directly at the gangplank at the main deck, the after port corner of the main deckhouse in this case.

Q. The after port corner of the main deckhouse?

A. Yes.

Q. That is about in the center of the vessel when you are going fore and aft?

A. I would say it was after of the center pretty well, Gunther.

Q. But the deckhouse is just about in the center fore and aft of the vessel, the entire deckhouse and the bridge; is that right? A. Yes.

Q. But the place where these couplings were was at the after port corner? A. Yes.

Q. Now, did you designate the crew that was to do the welding in No. 5 hold?

A. Not the individuals, no.

Q. You didn't. You gave orders to somebody else at Albina? A. Yes. [57]

Q. And they designated who was to go aboard the ship? A. Right.

Q. Now, were you there at the time the welding was done in No. 5 hold? A. No, sir.

Q. When had you left the ship that day?

(Testimony of J. R. Bailey.)

A. I don't recall.

Q. Did you leave shortly after you had met with Mr. Brewer aboard the ship? Did you leave soon after that?

A. I no doubt left but I was back again in the afternoon. I had another ship that I was working on, too.

Q. Were there other jobs going on that Albina was doing on the Robert Luckenbach at this time?

A. Yes, sir.

Q. And these two jobs were not all of them?

A. No.

Q. When did you learn of the fire on the Robert Luckenbach?

A. Some time after 6:00 and before 6:30.

Q. Did you go down to the vessel?

A. Yes, sir.

Q. Was the fire department on board when you got there?      A. Yes, sir.

Q. Were there any of your men working on the ship at that time?      A. No. [58]

Q. Other than these men that had been in No. 5 hold to do the welding?      A. No.

Q. Did you have anything to do with the extinguishing of the fire?      A. No.

Q. The fire department took care of that?

A. Yes, they were at work when I got there.

Q. Did you remain there until after the fire was out?      A. Yes.

Q. Did you participate with anyone represent-

(Testimony of J. R. Bailey.)

ing the Luckenbach Company in the determination of what repairs would have to be made to the ship after the fire?      A. Yes, sir.

Q. Who were the people representing the Luckenbach Company?

A. Mr. Saunders, Mr. Sterling and Mr. Arway that were definitely representing Luckenbach. Mr. Slater was there, but I don't know who he was representing. And of course the American Bureau of Shipping had a surveyor there, whom I assume was representing the ship.

Q. Yes, the American Bureau had a surveyor, but we are interested particularly in representatives of the Luckenbach Company.      A. Yes.

Q. Was there finally a summation made of the repairs that would have to be done because of the fire? [59]

A. Yes, they agreed on something that should be done.

Q. A list of work that was to be done?

A. Yes.

Q. You say they agreed. Now who agreed?

A. I don't know that.

Q. Was there a list of repairs prepared that were to be made?      A. Yes, sir.

Q. Whom did you discuss that with representing the Luckenbach Company?

A. I was in charge of making the repairs, and I no doubt discussed them with each of the three men I mentioned: Mr. Saunders, Mr. Sterling and Mr. Arway.

(Testimony of J. R. Bailey.)

Q. After the items of the repairs had been prepared, what took place then in connection with your doing the repairs? Just tell us what went on.

A. They discharged the cargo from No. 4 and 5 hatches and they hauled the ship to dry-dock and we dry-docked it.

Q. You did the repairs in dry-dock?

A. Yes, sir.

Q. Was that because plates on the side of the ship had to be removed? A. Yes, sir.

Q. And new ones installed? A. Yes, sir.

Q. Were there any plates in the bulkhead between 4 and 5 that [60] had to be removed?

A. Yes, sir.

Q. And new ones put in? A. Right.

Q. Just tell us briefly what the other work was.

A. We also made an insert in the 'tween deck in the No. 5 hold in the 'thwart forward corner. That would be in the way directly over the fire. The way directly under the fire was to the tank top and the plate that we renewed across on the side of the ship was across the tank top on the deep tank so that the deep tank had to be cleaned. I am not sure whether we did any repairing to the tank top or not, but it must be on the list of repairs.

Q. Who authorized you to go ahead and do the work? A. I don't know.

Q. Can you tell us just what took place? What did Mr. Sterling or Mr. Saunders or either one

(Testimony of J. R. Bailey.)

of them say with respect to your proceeding with the work?

A. Well, after this there was no longer a casual thing like verbal orders. They had all these surveyors there and everybody wrote down this and that, and they no doubt discussed it at the same time and finally reached a list of the work. By this time everything was in writing.

Q. Of what repairs were to be made?

A. Yes. And, of course, they had the cargo to take out—I [61] mean it wasn't like a voyage repair. It was something that—while the cargo was being discharged these things could be written down, and when it was done we had a written list of work to do, and the ship was available to us and the dry-dock was made ready and we dry-docked the ship and started the work. But who actually put the work in hand I really don't know.

Mr. Krause: All right. You may cross-examine.

#### Cross-Examination

By Mr. Wood:

Q. When you say "who put the work in hand," that is a phrase meaning who authorized the work. Is that what you mean?

A. That is what I intend it to mean.

Mr. Wood: That is all.



(Testimony of J. R. Bailey.)

Cross-Examination

By Mr. Gearin:

Q. Mr. Bailey, your initials are J. R.?

A. Yes, sir.

Q. Are you the same Richard Bailey who testified before the Coast Guard?           A. Yes, sir.

Q. Do they call you Dick?

A. Yes, they do.

Q. When you arrived aboard the vessel at 11:00 o'clock in the [62] morning who was in charge—you or Mr. Brewer?

A. Ordinarily this would have been my job from the start. It happened that we had a Waterman ship coming in and the Waterman port engineer arrived on the same morning, and Mr. Brewer, as he often does, had offered to take care of meeting one man while I met the other, fully knowing that I would eventually come over and take care of my own work.

Q. Mr. Brewer is your right hand; is that right?

A. I think I am more his right hand in this case. It was the other way around.

Q. Now, at the time when you knew that this section of five-inch fire line was removed—you saw that it was removed, I take it from the testimony?

A. Yes, sir.

Q. Do you know what effect that has upon the vessel being able to pump water to the deck side fire hydrants?           A. Yes, sir.

Q. What effect would it have?

(Testimony of J. R. Bailey.)

A. Without some cross-connection, I mean manually made, you can't pump from the pump to the fire lines.

Q. So the main fire lines on board the vessel would have been inoperative from the moment the fire line had been removed; am I correct?

A. You are correct. Everything at the height of the main deck or higher would have been inoperative. [63]

Q. Was there at the dock a water hydrant by which lines from the vessel could be attached in order that there would be water in the main fire line aboard the vessel? A. Yes, sir.

Q. Were you able to see that from your position as you were walking down the gangway?

A. Yes, sir.

Q. So that when Mr. Sterling and Mr. Radovich left the vessel they could have determined by this same expedient of looking to the right or left whether or not there had been a connection to the vessel? A. Yes, sir.

Q. By the same token, when you left the vessel, had you looked, you could have seen whether it was hooked to that. Now, at any time did you make any investigation, Mr. Bailey, to determine whether or not there had been an alternative line supplied to the vessel? A. Prior to the fire?

Q. Prior to the fire. A. No, sir.

Mr. Gearin: I have no further questions.

Mr. Krause: That is all.

(Witness excused.) [64]

R. V. BECK

was produced as a witness in behalf of the Respondent Albina Engine & Machine Works and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. What is your full name, Mr. Beck?

A. R. V. Beck.

Q. Where do you live?

A. In Portland.

Q. How long have you lived in Portland?

A. About twenty years.

Q. By whom have you been employed on and since the 2nd of April, 1958?

A. Albina Engine & Machine.

Q. How long have you been an employee of theirs?

A. About sixteen years.

Q. On April 2nd, 1958, what was your position with Albina?

A. General Foreman and pipefitter.

Q. On that date from whom did you get instructions to do some work on the ship?

A. Mr. Brewer.

Q. Mr. Brewer. Did that work involve taking out a section of the water line?

A. A section of the fire line.

Q. Of the fire line? [65]

A. Yes.

Q. Can you tell us how big that pipe was?

A. Oh, it was 5-inch pipe, and probably, as I recall it, about six feet or seven feet.

(Testimony of R. V. Beck.)

Q. In length?

A. And it was shaped. It was bent.

Q. It was five inches in diameter?

A. Five inches in diameter.

Q. This pipe ran from where to where?

A. Well, it came out from the pump in the engine room and onto a tee which distributes water fore and aft on the main deck.

Q. Did you go aboard the vessel and remove that section of pipe? A. I did.

Q. And you had some other men with you, I suppose?

A. That is right; two other men.

Q. What had to be done to take the section of pipe out?

A. Well, all we had to do was unbolt it. It was flanged in, and we unbolted it and put some blanks on that we are required to put on.

Q. Do you know why you were taking that section out?

A. Well, because the pipe was deteriorated, leaking, and they wanted a new section.

Q. The blanks that you put on, were they water-tight? [66] A. Yes.

Q. What was the effect of taking that section out and blanking off the two ends? What would they then have in the way of fire protection or water in their fire lines?

A. Well, they would have fire protection in the engine room from the fire pump, and by putting a

(Testimony of R. V. Beck.)

tee to a shore line they would have fire protection on deck.

Q. But the water would have to come from the shore?

A. Or have a jumper from between these two connections, take the blanks off and put a jumper on.

Q. They could have made a by-pass and it would have been possible to carry the water during the time that this new pipe was being fitted?

A. It could have been done.

Q. Do you know about when you removed the section of pipe and blanked off the ends?

A. About what time?

Q. Yes.

A. I think we started right after lunch, 12:30, and between 2:30 and 3:00 we went ashore with the pipe.

Q. Then I suppose the next day after the fire you re-installed it, did you?

A. Well, we made it that afternoon and evening, and then we had to send it out to the galvanizers, and then early the next morning after the fire, why, we re-installed it. [67]

Q. The re-installation took place the next day?

A. The next day; yes, sir.

Mr. Krause: You may cross-examine.

Mr. Gearin: We have no cross-examination.

(Testimony of R. V. Beck.)

Cross-Examination

By Mr. Wood:

Q. Mr. Beck, would you say that the removal of this section of fire line constituted normal voyage repairs?      A. Yes, sir.

Mr. Wood: Thank you. That is all.

(Witness excused.) [68]

LESTER L. SMITH

was produced as a witness in behalf of the Respondent Albina Engine & Machine Works and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Your name is Lester L. Smith?

A. Yes, sir.

Q. Where do you live, Mr. Smith?

A. Portland.

Q. How long have you lived in Portland?

A. Well, in the vicinity since 1914.

Q. Whom are you employed by?

A. Albina Engine & Machine Works.

Q. Were you employed by them on the 2nd of April in 1958?      A. Yes, sir.

Q. Were you one of the witnesses called in the Coast Guard hearing, Mr. Smith?

A. Yes, sir.

(Testimony of Lester L. Smith.)

Q. You testified there? A. Yes, sir.

Q. About what time did you report aboard ship?

A. Shortly before 6:00, I would say; a few minutes before 6:00.

Q. What work were you supposed to do? What had been your orders? [69]

A. To put a rung in the ladder, No. 5 lower hold forward.

Q. When you got there what were the conditions that you observed?

A. Well, I went down there and I noticed there was cargo in the hold forward of the ladder, but the rung being so low situated I figured that I could build a barricade around it.

Q. Were you the foreman of this crew?

A. Yes, sir.

Q. And you had two men with you?

A. Yes, sir.

Q. Who were they?

A. Mr. Riley and Mr. Larson.

Q. Now, you described in your Coast Guard testimony just what precautions you had taken, did you? You did testify regarding the precautions taken? A. Yes, sir.

Q. Now I want you to tell us just what you were doing before the fire started. What were you doing or in the act of doing?

A. That started the fire, you mean?

Q. Yes, just before the fire started.

A. Well, I was standing there with Mr. Larson, and we were trying to install this rung, which I

(Testimony of Lester L. Smith.)

had burned up on the main deck and brought down.

The Court: You had done what on the main deck?

A. We had burned it for length up on the main deck, your [70] Honor. But there was a little nubbin of weld from the old rung on the inner side of the stringer of the ladder, partway up the ladder, and I had Mr. Larson strike the arc to try to melt this little nubbin of weld off so we could get the rung in place, so that he could weld it in place. And, as I say, I had this barricade prepared. As soon as he struck the arc the sparks fell on the bottom, and I thought I would check behind the barricade to see whether any fire had started or not. And it had.

Q. Where had the fire started?

A. Well, it started the lint on one of these bales. They had some burlap bales down next to the deck, and when it hit this lint it just flash-fired, and she carried through to where I couldn't get it. I had a can of water there and I threw it onto the exposed fire that I could get at, but it was back in between the bales where I couldn't extinguish it.

Q. Was the can of water that you had similar to the one that you see sitting over there on the window sill?      A. Yes, the very same type.

Mr. Krause: That is Exhibit No. 26.

Q. About how full of water was it?

A. It was full right up to the neck.

Q. And had you taken that—

A. I say up to the neck. I mean it was up in—



(Testimony of Lester L. Smith.)

the large part of the can was full. It wasn't overflowing, I wouldn't say, or anything, but it was practically full. [71]

Q. Where was that can sitting at the time the fire started?

A. At the time the fire started it was sitting right at the forward ladder, right with me.

Q. Had you placed it there? A. Yes.

Q. When you had thrown the water on there the fire had not been extinguished, had it?

A. No. As I say, it had crawled back between the bales. And I tried to put it out with my hand or with a stick. It wasn't any—sure, it was a serious fire, but it wasn't any hot fire. It was just this lint burning on the bales actually at the time. But I couldn't get at it, so I proceeded to go up and try to get a fire hose down there.

Q. What did you do then?

A. Mr. Riley was standing there, as I recall it, and I hollered at him to go and get a fire hose, and I told Larson to stay down there. And Riley and I went up, and we started to get the fire hose out of this fire hose rack, which was right at the top of the hatch, at the forward end of the hatch. And after we got the hose out while he was lowering it I went to the engine room and asked them to start the fire pumps. Now I am not positive as to calling for the Fire Department, whether it was on my way down or the way back or on the following trip that I called—or told the guard to call the Fire Department.

(Testimony of Lester L. Smith.)

Q. The guard you are talking about is the gangway guard, now? [72]

A. Either Burns or Pinkerton. I don't know which they had on the ship at that time.

Q. You made a trip down into the engine room and came back up on deck? A. Yes, sir.

Q. What did you ascertain then as to whether there was any water in the hold?

A. I went back and asked Riley—I got close enough to Riley to where I could holler to him and ask him if they had any water. He said, "No water yet." So I proceeded to go back to the engine room again.

Q. Do you know whether the hydrant had been turned on? A. Yes, sir.

Q. It had been turned on?

A. Yes, sir. The second time I am positive it was.

Q. Then you went down again. What for?

A. Well, to try to get them to turn the fire pumps on.

Q. When you got down the second time did the men in the engine room tell you whether the pump was working or not?

A. No, I told him—I says, "I haven't got any water on deck yet." So I think it was the second time—well, I know it was the second time, I got this guy on land, I am practically positive, and I told him we didn't have water on deck yet. And I went down below and I went back up, and we still didn't have water. So I made one more trip down

(Testimony of Lester L. Smith.)

to the engine room, and [73] the man down there told me, he said that the fire pumps were running. He said, "Go up on deck; the trouble is up on deck somewhere."

Q. Had you known of the fact that this fire line on the main deck had been severed?

A. No, sir.

Q. That is, before the fire you didn't know about it?

A. No, sir.

Q. Now, where had Larson been during all this time?

A. He stayed down in the hold with the fire hose.

Q. When you came up from the engine room the third time, was he still down in the hold?

A. Yes, sir.

Q. What can you say as to the extent of the fire at that time?

A. Well, there was smoke rolling out of the hold, but it wasn't so bad but what a man could stay down there. In fact, Larson was still down there. It was confined to the forward area of the hold.

Q. Now, did you see Mr. Radovich there?

A. No, I didn't. He may have been, but I don't remember.

Q. You didn't see him before the fire?

A. No, sir.

Q. Did you see him at any time after the fire had started?

A. Not that I remember, no.

(Testimony of Lester L. Smith.)

Q. Now, what sized hose was this that you had lowered down [74] into the hold?

A. 2½-inch fire line.

Q. Did it appear to be in good condition?

A. Beg pardon?

Q. Did the hose appear to be in good condition? A. It seemed to be, yes.

Q. Did you get any water through it at any time? A. No, sir.

Q. Now, can you give us some estimate as to how long it was before you had gotten the hose down in there to Larson from the time the fire started?

A. Well, that is pretty hard to answer exact. I didn't spend any time at all down there to amount to anything when I seen I couldn't get the fire out. We went right up to the top. It was just a matter of opening the door and dropping the hose over the hatch.

Q. Can you give us some estimate of how far you had to travel from down below up the ladder to the deck and over to the hydrant, where the hose was?

A. Oh, I would say within a couple of minutes.

Q. What do you mean by a couple? Is that two minutes?

A. Two minutes, yes, I would say. That is two years ago, but I know I did it just as fast as I could. That is all I can say.

Q. Then you ran down into the engine room twice? A. Three times. [75]

(Testimony of Lester L. Smith.)

Q. Three times, yes. And when you came back up again the third time Larson was still down below? A. Yes, sir.

Q. How much time had gone by by then, would you estimate?

A. Oh, between five and ten minutes, I would say.

Q. Between five and ten minutes. At that time the fire was still confined to the forward part of the hold? A. Yes, sir.

Q. Now, while Larson was still down there if you had been able to obtain water in that hose could you have controlled the fire?

A. While Larson was down there, yes, very definitely.

Q. What did you say was burning at that time?

A. Well, as I say, at the time that I left it was just the fuzz on the burlap. No doubt some of the burlap had caught fire by that time. I wasn't down there, and I couldn't say exactly. But there wasn't so much cargo there but what a man could put it out with a fire hose if he was able to stay down there with the smoke, which Larson was at the time. That is the only reason I say that a man could control the fire. There wasn't a big area of fire there, and he was able to stay down there with the smoke and able to use the hose on where the fire was at that time.

Q. Now, up to that time had there been any damage to the vessel, to the ship itself? [76]

A. No, there wasn't that much heat at that time.

(Testimony of Lester L. Smith.)

Q. Had the cargo battens started burning yet?

A. Not that I know of; not visibly, no. Larson could answer that better than I could. I was up on top.

Q. How much longer was it before the Fire Department arrived?      A. I don't—

Q. Strike that question. Just a moment, Mr. Smith. Did some of the members of the crew appear at any time and also get to work on the fire lines?

A. Not to my knowledge.

Q. You didn't see any of them?      A. No.

Q. Now, give us an estimate as to how long it was after you had been down into the engine room the third time, and Larson was still down in the hold—how long after that was it before the Fire Department arrived?

A. Well, it seemed like a long time. Now, I couldn't give you an exact figure on when the Fire Department arrived.

Q. We know you can't give an exact figure. What is your best judgment on it?

A. You get a man as excited as I was, it is pretty hard to tell you—

The Court: Can you give us your best estimate on it?

A. Well, I don't know. At the time I thought—I would stand corrected on it, but I would say at least fifteen minutes. [77]

Q. During all that time, at least, until the Fire Department came was there any water available to place on the fire at all?

(Testimony of Lester L. Smith.)

A. Not before the Fire Department came; no, sir.

Mr. Krause: You may cross-examine.

Cross-Examination

By Mr. Gearin:

Q. Mr. Smith, the only protection that you had for fire was the can that we have talked about that is over on the window sill, Exhibit No. 26?

A. Besides the barricade I had; yes, sir.

Q. Now, you say that you had a barricade?

A. Yes, sir.

Q. Did you have any barricade on the starboard side of the ship? A. Yes, sir.

Q. Did you have one on the port side?

A. Yes, sir.

Q. After Mr. Larson struck an arc did you not tell him to hold it because you wanted to look to see if there was any fire?

A. Behind; yes, sir.

Q. You knew before he started the arc, started to knock off that remnant of ladder rung, that there would be sparks coming from the cutting? [78]

A. Yes, sir.

Q. And you anticipated that there might have been sparks getting into the burlap, and that is what caused you to say, "Hold it; I want to see"?

A. I didn't anticipate it, no. I was trying to take precautions.

Q. I know that, sir, but the reason that you did

(Testimony of Lester L. Smith.)

take a look to see if there was a fire was because there was the possibility of fire?

A. A possibility, yes.

Q. Yes. And you have been welding for some period of time?

A. Well, I have been associated with them down there since '42, yes.

Q. You are the foreman of the boilermakers down there? A. The night shift, yes.

-Q. Prior to the time that you started welding did you make any inquiry to see whether or not there was water available in the fire lines aboard the vessel?

A. No. I assumed there was. They always have—I mean the fire lines are available.

Q. Now, were the ladder brackets attached to the center-line column in the forward end of Hold No. 5? A. Yes, sir.

Q. Did you place two pieces of plywood sheets that the longshoremen use as walking boards about the center column, one on [79] each side?

A. One on either side of the center-line column.

Q. One piece extended from the column to the port side and the other started out from the column on the starboard side?

A. Well, and at an angle aft, yes. The ladder sits offset on the column.

Q. Did you then place a heavy cardboard carton on the port side of the ladder running fore and aft?

A. Yes, but—I put this pasteboard carton there,



(Testimony of Lester L. Smith.)

yes, and I put the three sheets of plywood—I was using three pieces of plywood.

Q. Did you at that time figure that any sparks would go to the port side of the center line?

A. Not necessarily, no.

Q. Did you place any cartons on the starboard side of the place where you were working?

A. No. As I say, this ladder is off the center line, and on the starboard side I could put this piece of plywood against the column and point it at an angle aft. On the port side I couldn't do it, because the ladder protruded by there, so I put that directly athwartships, and the other one, that was against the paper carton directly fore and aft.

Q. I will ask you, Mr. Smith, if at the time that you made these arrangements prior to the time that the welding or the burning began you figured if any sparks rolled they would go [80] to the port side of the center line, and that is why you didn't place any cartons on the starboard side of the place where you were working?

A. No, sir.

Q. All right. Now, I am going to hand you, through the courtesy of the Bailiff, a two-page statement which has been contained in Libelants' Exhibit No. 7, and I will ask you, Mr. Smith, if your signature appears on the bottom of those pages.

A. Yes, sir.

Q. In front of your signature on each of those pages does there not appear in your own handwriting, "Read and found O.K."?

A. Yes, sir.

(Testimony of Lester L. Smith.)

Q. Do you remember giving a statement to a Mr. Forrest Johnson on the date shown on the top of that statement, a tall, gray-haired man?

A. I thought you was the gentleman that I spoke to. I am not kidding you. I remember having him—whoever took this statement—having him strike some of this.

Q. Did you read it before you signed it?

A. Well, between the two of us we did, yes.

Mr. Gearin: May I approach the witness, your Honor?

The Court: Yes.

Q. (By Mr. Gearin): Now, I know this has been two years ago. This statement was taken on what date, for the benefit of the Court, please? [81]

A. May 5th.

Q. 1958? A. Yes, sir.

Q. I am going to ask you if the statement to which I am going to direct your attention is contained in the statement that you have signed at that place. First, the address, 1928 Southeast 130th Avenue, is your home address? A. Yes.

Q. "I then placed a heavy cardboard carton on the port side of the ladder running fore and aft. I figured if any sparks rolled they would go to the port side of center line. That is why I did not place any cartons on the starboard side of the place where we were working."

Did I read that correctly?

A. Well, the only reason—

The Court: Did he read it correctly?

(Testimony of Lester L. Smith.)

A. Yes. Yes, he did.

The Court: All right.

A. I could have made that statement—pardon me—and the only reason, I explained about this ladder is off to the port side of the center, and this cardboard carton, I also had a piece of plywood lying up against this cardboard carton.

Q. In the sentence that I directed your attention to I note a correction in a different-colored ink and the words “of center [82] line,” the word “rolled,” and the word “a.” I will ask you if those corrections to that sentence were not made by you.

A. Yes, sir.

Mr. Gearin: We offer this. May I ask that this be marked as Exhibit 7-A, Mrs. Mundorff, No. 7 being our sealed exhibit for impeachment purposes only. When marked I will pass it to Counsel. We intend to offer it for impeachment.

Mr. Krause: We have no objection, your Honor.

The Court: Admitted.

(The statement of Lester L. Smith, above referred to, was received in evidence as Libelants' Exhibit 7-A.)



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 Lm

1929 A.E. 130 2d. an.

Portland, Oregon.

May 5, 1958.

My full name is later L. Smith.

I reside at the above address - Phone Ol. 4-4816.

I am employed as a foreman of boilermakers by Alvin Engine & Machine Works.

on April 4, 1958 at about 5:50 P.M. I went into the lower hold #5 of the S.S. Robert Lockwood & prepared for work to be done to replace a ladder rung on the forward ladder. The longhairs were leaving the ship so I looked at the work to be done. I took two pieces of plywood sheet that the longhairs use as walking boards & I put one on each side of the center line column to which the ladder brackets were attached. one piece extended out from this column to the port side & the other piece extended out from this column to the starboard side. I then placed some heavy ord. board catwalk on the port side of the ladder running fore & aft. I figured if any <sup>rolled</sup> ~~fell~~ they would go to the port side of <sup>centerline</sup> this is why I did not place any catwalk on the starboard side of the place where we were working. I placed some drainage lumber down on the deck as a precaution against any water getting underneath this I showed arrangements that I had put up.

My welding crew cut the ladder rung to length upon my instructions up on the main deck. They then brought the ladder on down into the hold. I went to get a bucket of water but I found a bucket of water 2 1/2 & 3 gallon which the longhairs had been using as drinking water & I figured to use that if any fire started.

I tried the ladder rung for length & I found my old  
 Read and O'Neil Lecter L. Smith



(Testimony of Lester L. Smith.)

Mr. Gearin: I have nothing further, your Honor.

Cross-Examination

By Mr. Wood:

Q. Mr. Smith, I am thinking about these times. You said you came on board the ship a little before 6:00 o'clock, didn't you?

A. Yes, sir. The reason I say that, the longshoremen, some of them, were just leaving.

Q. You came on ahead of your own two associates, did you?

A. The men were already there.

Q. You mean Larson and Riley?

A. Larson and Riley were already there. [83]

Q. You got there about 6:00 o'clock, then, or did you get there before 6:00?

A. No, before 6:00.

Q. How much before?

A. A very few minutes. The longshoremen working—some of them were coming off yet.

Q. A very few minutes, you say. Do you mean three or four or five minutes?

A. Yes, I would say so.

Q. The welding machine—I am not very familiar with it, but it is quite large; it is wheeled aboard from the dock, isn't it?

A. It is on a four-wheel trailer. The welding machine is on a four-wheeled trailer.

Q. Was that already on the ship?

A. No, sir. We didn't take it on the ship. It was on the dock.

(Testimony of Lester L. Smith.)

Q. But you wheeled it out from the dock adjacent to the ship?

A. I helped the men roll it adjacent to the No. 5 hatch.

Q. Did you do that after you arrived at the ship?      A. After we arrived at the ship.

Q. So that would occupy what part of these minutes before 6:00 o'clock?

A. Well, very few. I mean it was right there, and that is the first thing we did as I got there, before I ever went down in the hold. [84]

Q. Then I understand you lowered some welding wires down into the hold, didn't you?

A. Well, the men did. I was down in the hold.

Q. You were already down there?

A. Yes, sir; I was down in the hold.

Q. You didn't bring any fire-fighting equipment aboard with you, did you?      A. No, sir.

Q. This can that we have talked about, this water can, that was nothing you brought aboard? You found it down there?

A. I was going out of the hatch to get a bucket of water at the time that I found this can down there.

Q. You found it?

A. At the after ladder.

Q. And decided to use it?      A. Yes, sir.

Q. When you got down in the hold I suppose that would be by now a few minutes after 6:00, would it? I am trying to gauge the time of the things that you did.



(Testimony of Lester L. Smith.)

A. I realize that, Mr. Wood.

Q. What did you do when you got down in the hold?

A. What did I do when I got down in the hold? I investigated to find out where the rung was, and then I prepared this plywood, as I was saying.

Q. But before you went down in the hold at all you had already [85] spent some time up on deck burning off an end——

A. No, I didn't.

Q. Who did?  
you had already [85] spent some time up on deck

Q. You didn't stay there on deck while they did that?

A. No, sir; I didn't stay there at all.

Q. You just told them to do it?

A. I did tell them to get the rung ready.

Q. You spoke of burning off the end of something up on the deck.

A. Not myself personally.

Q. You had them do it?

A. I had them do it. I went down and measured the length of the rung and called it up to them on deck.

Q. All right. You measured the length, then. Then you looked around and procured the plywood boards, did you?

A. The plywood was down there.

Q. Then did you erect the barrier?

A. Yes, sir.

Q. Yourself?           A. Yes.

Q. Or with the help of the other two men?

(Testimony of Lester L. Smith.)

A. No, by myself, before they got down there.

Q. How big were these boards?

A. 4 by 4, approximately. [86]

Q. 4 by 4? A. Approximately.

Q. How thick were they?

A. Approximately three-quarters of an inch.

Q. How many of them did you use?

A. Three.

Q. One on the starboard side and two on the port side up the ladder? A. That is right.

Q. What? A. That is right.

Q. So you fixed them up. Do you know how long it took you to do that?

A. I had them fixed up before the welder got his weld lead down there.

Q. Then you got this carton fixed up on the port side, too, didn't you?

A. Well, this carton was right in the area where I was working.

Q. Then, having got that fixed up, did the other two welders come down into the hold?

A. Larson was the first man down there with the stinger. Riley is the man that cut the rung off up on top and let it down.

Q. But they were both down there when the fire broke out? [87]

A. They were both down in the hold at the time of the fire. Riley actually hadn't got up to the ladder yet. He was back in the square of the hatch.

Q. Which one handled the welding machine and struck the arc? A. Mr. Larson.

(Testimony of Lester L. Smith.)

Q. When Larson struck the arc the sparks flew?

A. The sparks flew.

Q. What? A. The sparks fell down, yes.

Q. Fell down? A. Yes.

Q. Did I understand you to say there was a flash fire at once?

A. When I looked at it, yes, it traveled—I don't say like gasoline would go——

Q. Over what extent?

A. Well, it was back in there eight or ten feet in the bales.

Q. It just flashed back? A. Yes.

Q. Then did you reach for the can of water?

A. The can of water was there.

Q. Then did you begin to pour the water on?

A. Yes, sir.

Q. All of it? A. Yes, sir.

Q. You just doused it as fast as you could? [88]

A. Yes.

Q. And it had no effect?

A. No. It did in the particular area, yes.

Q. But the fire had got beyond that area, had it?

A. That is right. It was back in between the bales. There was other cargo on top of it.

Q. How long do you think it took, say after 6:00 o'clock, before the fire broke out? Was it ten minutes? A. I couldn't state.

Q. All right.

A. No, I don't think it was ten minutes.

The Court: Would you say it was after 6:00?

A. It was after 6:00, yes.

(Testimony of Lester L. Smith.)

Q. (By Mr. Wood): When you placed these walking boards there, was there any gap between them?

A. No, not to my knowledge. In fact, as a safety precaution—there was no gap between them, but in case that it falls down on the steel deck, which was good and flat—I did put another board along the edge of that as an extra precaution to catch any sparks.

Mr. Wood: May I see the diagram that is attached to the Coast Guard exhibits?

Q. Mr. Smith, I am going to show you this Exhibit 23 and ask you if that is a duplicate of the sketch you made for the Coast Guard. Here is another one. Your name is on that one. [89]

A. I don't know what this is supposed to show. I don't know what this is supposed to show.

Q. Do you remember making that sketch?

A. No, but it is my writing. I will tell you that. I don't remember making the sketch.

Q. You recognize it, do you?

A. It is my writing.

Mr. Wood: I would like the Court to follow this.

Q. Can you point there to the walking boards?

A. This here is a walking board. This was a walking board, and here is a walking board, and here is one.

Q. You had one walking board on the starboard side and two on the port side?

(Testimony of Lester L. Smith.)

A. That is right.

Q. That is, one athwartship and a second one fore and aft?

A. Fore and aft, yes.

Q. Was there a space there between the two walking boards? There must have been.

A. No.

Q. It shows here that there was.

A. Where does it show?

Q. Here (indicating).

A. No. This must have been the center-line column, Mr. Wood.

Q. How about things rolling underneath there?

A. That is what I am talking about, these other little [90] boards that are down here.

Q. You put another board athwartships at the base of the walking boards?

A. That is right.

Q. But, nevertheless, the sparks rolled underneath?

A. They got under, yes.

Mr. Wood: I think that is all, your Honor.

The Witness: That is not an unusual thing, for sparks to fall like that in that type of welding, your Honor, no.

The Court: It is a rather common thing, is it not?

A. Well, yes.

The Court: That is all.

Mr. Krause: Just a moment. I would like to see Exhibit 7-A, please, once more.

Mr. Wood: I would like to ask the witness one more question, your Honor.

The Court: You may.

(Testimony of Lester L. Smith.)

Q. (By Mr. Wood): Mr. Smith, could it have been possible that some of these sparks flew over the board?

A. No, I don't see—it wasn't possible. I wouldn't say it wasn't possible, but I was watching and they didn't.

Q. The rung that you were welding was several feet above the deck, wasn't it?

A. It was approximately, I would say—I was trying to think of that myself. I will stand corrected on it, but I was thinking [91] myself just what the height of that rung was, and I think it was the third rung from the bottom, which would put it below——

Q. I think you testified at the Coast Guard hearing, as I remember it, it was the third or fourth rung and was about breast-high. I think you testified that way. Did you?

A. I don't remember just what I testified.

Q. Was it about breast-high on you?

A. I am trying to remember today whether it was the third rung or not. That would show in the specifications. They would tell you that, I mean if you get a copy of Albina's specifications.

Q. Assuming it was the third rung, how high up would it be?

A. Well, there are 12-inch spaces.

Q. That would be 36 inches high?

A. That is right.

Q. Then the rung you were welding would be nearly to the top of the walking board, wouldn't it?

(Testimony of Lester L. Smith.)

A. Your walking board was back behind it, also.

Q. Yes, and the walking board was four feet high above the deck, wasn't it?

A. That is right.

Q. And the rung you were welding was about three feet high above the deck, wasn't it?

A. Well, now, approximately.

Q. So there was only one foot—— [92]

A. Another thing——

Q. It would only take one foot of jump for the sparks to go over the walking board?

A. That is right, but we was cutting it off the bosom of an angle iron, too, if you understand.

Q. No, I don't.

A. You know what a vertical angle would look like. I was cutting it off the side there. There was a possibility of it going over the top; yes, sir.

Mr. Wood: That is all.

Mr. Krause: I have nothing further.

Mr. Gearin: I have something further, if I may. I wonder if Mrs. Mundorff would hand the witness Exhibit No. 1, being the testimony given before the Coast Guard.

Would you look, sir, at Page 23 of that transcript.

The Court: This is the witness' testimony before the Coast Guard?

Mr. Gearin: Yes, sir.

Q. Now, Mr. Smith, you stated that just a little bit of the fuzz, or whatever it was, on the burlap

(Testimony of Lester L. Smith.)

was burning and if you had gotten water you could have put the fire out.

A. Just a little bit.

Q. Tell us how much was burning there when you first saw it.

A. Well, as I say, all it was was fuzz on the burlap; yes, sir. [93]

Q. Fuzz on the burlap. Do you recall testifying before the Coast Guard in response to a question asked you by the Hearing Officer was follows:

“Q. Oh, you mean you climbed up on deck to get a fire hose just because the spark went under the bulkhead?

“A. Oh, no, sir; it was starting to go. I mean there is no stopping that piece of hemp once it starts burning.”

Did you so testify, Mr. Smith? You can check that page. A. Evidently I did.

Mr. Gearin: I have nothing further, your Honor.

Mr. Krause: What page number was that?

Mr. Gearin: Page 23.

The Witness: Is that my testimony here? Down below I know it isn't here.

Mr. Gearin: Did you find the question and answer on Page 23?

A. Yes, sir. But how about just below this question, it says, “Who is ‘they’?” “Mr. Smith and Mr. Larson” is the answer. That can't be my testimony on that page.

Mr. Gearin: On Page 23? A. Yes, sir.



(Testimony of Lester L. Smith.)

Mr. Gearin: May I approach the witness, your Honor? [94]

The Witness: I think you will find this is Mr. Riley, isn't it?

Mr. Gearin: I don't know, your Honor. This is an official copy. I don't know what the witness refers to. Perhaps Mr. Krause can help us on that, or Mr. Wood.

Excuse me, your Honor. Mr. Wagner calls my attention to the fact that I was referring to the testimony of Mr. Riley on Page 23, and I apologize to the Court and Mr. Smith.

The Court: All right. The examination will be stricken and the witness will be exonerated of all answers in connection with that.

Mr. Gearin: I am sorry, your Honor. It was an oversight on my part.

Mr. Krause: I think that is all.

The Court: I think I have a question, now. How far would you say it was from the point of where the arc was struck to the particular piece of metal to where the fire first started, or where you noticed that it first started?

A. Well, as I say, this dropped down to the deck.

The Court: Then that would be about three feet?

A. Down to the deck, yes.

The Court: Down to the deck. Then it started directly underneath?

A. It rolled under these boards—not directly underneath there, but the sparks got under the

(Testimony of Lester L. Smith.)

boards and to the cargo [95] that was behind these boards, behind this barricade.

The Court: Then how far away was it started? Would you say it started from directly underneath the rung?

A. Probably two feet, something like that, or two and a half feet. There was cargo directly behind.

The Court: Then when you put these cartons up there you knew there was burlap within two or two and a half feet of the particular ladder?

A. Yes. I knew the cargo was there. I don't say that I especially noticed the burlap.

The Court: You knew——

A. I knew there was sacks there; yes, sir.

The Court: That is all.

(Witness excused.) [96]

### LEO RILEY

was produced as a witness in behalf of the Respondent Albina Engine & Machine Works and, having been first duly sworn, was examined and testified as follows:

#### Direct Examination

By Mr. Krause:

Q. What is your first name, Mr. Riley?

A. Leo.

Q. Where do you live? A. Portland.

Q. How long have you lived in Portland?

(Testimony of Leo Riley.)

A. Since 1939.

Q. Whom are you employed by now?

A. Northwest Marine Iron.

Q. In what capacity?

A. As a welder leadman.

Q. A welder leadman?           A. Yes, sir.

Q. On April 2nd, 1958, whom were you working for?           A. Albina Engine & Machine Works.

Q. Were you employed on the Robert Luckenbach?           A. Yes, sir.

Q. At that time you were working on the night crew, were you not?           A. Yes, sir.

Q. About what time did you get down to the Luckenbach dock? [97]

A. Oh, it was shortly before 6:00.

Q. At what hour were you supposed to commence work?           A. We come in at 4:30.

Q. Where did you report for work?

A. I reported for work at the Albina Yard.

Q. And then you were dispatched over to the Luckenbach ship?           A. Yes, sir.

Q. About what time did you arrive there?

A. Shortly before 6:00.

Q. And what did you do?

A. Well, we pulled the welding machine over next to the boat on the dock.

Q. Next to the No. 5 hatch?

A. Yes, sir; and got the welding leads aboard the ship.

Q. Those are wires that you take over?

(Testimony of Leo Riley.)

A. Yes, sir; copper wires from the machine.

Q. What else did you do?

A. Oh, Mr. Smith had called up a measurement as to the length of the rung, and I cut it on the deck before the repairs—prior to going down in the hold to put it in the ladder.

Q. You had your welding lead or the stinger up there on deck?

A. Well, it wasn't a stinger that we cut the stock with for the rung. It was a burning torch.

Q. A burning torch. What sort of fuel does that torch use?

A. It uses a combination of acetylene and [98] oxygen.

Q. Does a welding iron also use the same fuel?

A. No; it uses electricity.

Q. That is electric. Now, you cut this rod to the proper length?      A. Yes, sir.

Q. Did you then have to lower the stinger down into the hold?

A. We lowered the welding leads down into the hold.

Q. The welding leads. What about the tool with which the welding is done?

A. That is the welding lead, sir, or stinger, as it would be called.

Q. Who was there with you besides Smith?

A. Mr. Larson.

Q. Now, I suppose that was after 6:00 o'clock when you got down into the hold?

A. Yes, sir; it was.

(Testimony of Leo Riley.)

Q. Do you recall in what order you had gone down?

A. Smith had gone down first. I don't recall who went down next.

Q. But you and Larson both got down there?

A. Yes, sir.

Q. Who held the welding lead?

A. Mr. Larson.

Q. He was doing that. Just tell us what happened.

A. Well, we seen that the bar that I had cut off was not going [99] to fit. There was a little kind of bump on the weld of the angle iron, so we were going to have Mr. Larson knock off this little bump on the old rod, the old weld, so that the bar would fit in place.

Q. Did he knock it off?

A. Well, I reckon he did.

Q. What happened?

A. Immediately Mr. Smith asked him to stop. He had just barely struck the arc, and Mr. Smith had evidently seen a spark drop that he wanted to investigate or some such.

Q. Go ahead. Tell us what happened. What did you do?

A. Well, they pulled the barricade out from in back of the ladder and threw what water they had in the can against the fire.

Q. Did you see fire there in the cargo?

A. I didn't see the fire. I seen the smoke.

Q. Who threw the water on it?

(Testimony of Leo Riley.)

A. Mr. Smith.

Q. Did you do anything about trying to extinguish it then?

A. Well, at that time there was a lot of things going on, and Mr. Smith said that there was a fire, and I started immediately up the ladder to get the fire hose.

Q. Keep on going and tell us what you did.

A. Well, Mr. Smith was coming up the ladder behind me, and we got the fire hose into the hold, down to Mr. Larson, and then [100] I opened the valve on the fire line. That is about all I did.

Q. Did you get any water in the hose?

A. Not a bit.

Q. What did you do after that? Did you see where Smith went?

A. He headed towards the house on the ship.

Q. The amidship house? A. Yes, sir.

Q. Is that the direction to go if you want to go down into the engine room?

A. It is the only way to get down in there.

Q. In the meantime where did you remain?

A. I remained standing at the top of the hatch where I could see down to Mr. Larson.

Q. Where you could see down? A. Yes.

Q. Could you see Larson down there?

A. Yes, sir; I could.

Q. What was the condition of the fire?

A. Well, I could see an awful lot of smoke. I couldn't see any flames.

(Testimony of Leo Riley.)

Q. Did you see Smith come back several times after that?

A. Yes, sir. It seems like he was gone and back before he was gone.

Q. You didn't get any water in that hose anyway? A. No; we didn't. [101]

Q. Can you just give us your best estimate as to how much time went by before you came up on deck and lowered the hose down into the hatch? How long was that after you first saw the smoke in the burlap?

A. Oh, I would say two minutes.

Q. By the time Smith came back the third time or the second time—he made three trips over toward the amidship house—how much time had gone by by that time?

A. Oh, I would say perhaps six minutes or five minutes.

Q. Was Larson still down in the hold then?

A. Yes, sir; he was.

Q. How much longer did he remain down there? Do you know the circumstances of his coming out?

A. Well, I heard someone holler at him to come up.

Q. You don't know who that was?

A. No; I don't know who that was.

Q. Now, if you had gotten water into that hose—at the time you had lowered it down to Larson and after Mr. Smith had gone down or headed in the direction of the engine room and returned again, what was the state of the fire at that time?

(Testimony of Leo Riley.)

A. Well, as to fire I don't know.

Q. You couldn't see any fire?

A. I couldn't see any fire.

Q. How big was the blaze, judging from the smoke that you had there? [102]

A. Well, I don't know. We could see a lot of smoke, but I couldn't see any blaze.

Q. Do you have any idea as to whether you could have put the fire out if you had gotten water down there by that time?

Mr. Wood: I think I will object to that. He can state the facts.

The Court: I will ask a question. Can you express an opinion or do you have any experience with this type of thing so that you could express an opinion as to whether the fire might have been put out or not at that time?

A. No.

The Court: You just have no experience along that line?

A. No.

The Court: Objection sustained.

Q. (By Mr. Krause): What sized hose was it that had been lowered down to Larson?

A. 2½-inch fire hose.

Q. Can you give us an idea about how long it was before the Fire Department got water onto the fire after it had started?

A. Well, it seemed like an awfully long time.

Q. Of course, what we want is your estimate of time; not how long it seemed, Mr. Riley.



(Testimony of Leo Riley.)

A. Well, I would say ten or fifteen minutes.

Q. Had Larson come out of the hold before the Fire Department arrived? [103]

A. Yes, sir; he had.

Q. Up to the time that he came out were you still able to see him down there; that is, was the smoke so dense that you couldn't see him standing down in the hold?

A. Well, I don't think it was, but I can't recall exactly as to whether I could still see him or not.

Mr. Krause: You may cross-examine.

#### Cross-Examination

By Mr. Wood:

Q. Mr. Riley, it was Larson, wasn't it, who was the one that burned off this nubbin of angle iron?

A. Yes, sir; it was.

Q. Because he was the welder? A. Yes.

Q. What do they call you? What were you?

A. I was a ship fitter on this particular job.

Q. What was your particular duty in this three-man job?

A. Well, my particular duty was to cut the bar of steel and fit it to the ladder.

Q. And Larson was then to weld it?

A. Yes, sir.

Q. How far away were you standing from Larson when he struck the arc that burned the metal?

A. Oh, I can't say. [104]

Q. Were you close to him or quite a ways off?

(Testimony of Leo Riley.)

A. Oh, I was back a ways.

Q. This nubbin of metal was at least three feet up above the deck, wasn't it?      A. Yes, sir.

Q. And the walking board was only about four feet high from the deck, wasn't it?      A. Yes.

Q. Isn't it possible some of the sparks flew over that walking board?

A. Well, I couldn't say. Sparks will fly every direction. It is possible.

Q. This is cross-examination, and I think I have the right to say that there is one witness who testified he saw the sparks fly over the walking board. Do you have any comment to make on that?

A. No; I don't, sir.

Q. When you talk about going up and down the ladder into the hold, and up again and back and forth, which ladder did you men use?

A. We used the after ladder.

Q. That is what I thought. You used the after ladder all the time?      A. Yes, sir.

Q. Going up and back and forth? [105]

A. Yes, sir.

Q. That is about 40 feet away from the forward ladder, isn't it?

A. No; it isn't that far.

Mr. Wood: All right. That is all.

(Testimony of Leo Riley.)

Cross-Examination

By Mr. Gearin:

Q. Mr. Riley, I take it that you at no time saw any flames? You just saw the smoke?

A. Not as I recall, any flame.

Q. Now, through the courtesy of Mrs. Mundorff, I am going to ask that you be given the transcript of testimony, our Exhibit No. 1. Do you recall testifying before the Coast Guard?

A. Yes, sir; I do.

Q. Would you turn to Page 23, Mr. Riley? Do you have Page 23 there?           A. Yes, sir.

Q. I am going to ask you if you testified as follows under oath at the Coast Guard hearing that was conducted by the investigating officer, as follows:

“Q. You mean you climbed up on deck to get a fire hose just because the spark went under the bulkhead?

“A. Oh, no, sir; it was starting to go. I [106] mean there is no stopping that piece of hemp once it starts burning.

“Q. It started to flame instantly, did it?

“A. Yes, sir.”

Did you so testify?

A. Well, it is written down there. I must have done so.

Q. Now, the rung on the forward ladder that was out was about the fifth rung up from the deck, was it not?           A. Well, now——

(Testimony of Leo Riley.)

Q. Do you remember now just which one it was?

A. I do not, no.

Q. How far was the cargo piled from the ladder where you were working?

A. The cargo forward of the ladder or aft of the ladder, sir?

Q. How close to the ladder was the nearest cargo?

A. Oh, I would say the closest cargo was forward about—about two and a half feet forward of the ladder.

Q. That is your memory at this time?

A. Yes, sir.

Q. You can't tell us whether sparks went over the top of or underneath the plywood shield?

A. No; I couldn't.

Q. I understand that when you strike an arc unless you have your hood on you shouldn't look that way?

A. It is kind of hard on the eyes if you do. [107]

Q. It is not a matter of fact that you usually have a CO2 extinguisher with you when you weld on metals?

A. Well, at times, yes, and other times—

Q. Is it not the general practice of Albina to have a fire extinguisher or water when welding in holds? I will ask that question directly.

A. It is now, but it wasn't at that time.

Q. Had your immediate supervisor ever given you instructions to have a fire extinguisher handy when welding?

A. No, sir.

(Testimony of Leo Riley.)

Mr. Gearin: May I approach the witness, your Honor?

The Court: Yes.

Q. (By Mr. Gearin): Do you recall this testimony on Page 28? And this testimony was soon after the fire, Mr. Riley. This was April 3rd, 1958, the day after the fire. Do you recall that?

A. Yes, sir; I think so.

Q. Do you recall being asked this question by Lieutenant Commander Mason of the United States Coast Guard:

“Q. Have you ever been given any specific instructions by your employers relative to what you will do and what you will not do with regard to safety against fire?

“A. Well, they ask us to have a fire extinguisher; that’s about all. [108]

“Q. They ask you to have a fire extinguisher?

“A. Yes, sir.

“Q. Or did they direct that you shall have a fire extinguisher?

“A. Well, we should have one, yes.”

Did you so testify? A. I guess I did.

Q. And a further question:

“Q. Did you get these instructions with regards to having a fire extinguisher verbally, or is there something in writing that you know of?

“A. Not that I know of.

“Q. I see. Strictly verbal instructions furnished all welders?

(Testimony of Leo Riley.)

“A. Well, it is for everybody working on the waterfront, yes.”

Did you so testify?           A. Yes.

Q. And also the third question on the top of that page:

“Q. Now, when you go out on these particular welding jobs, is it a—is there any form of general practice that you conform to for safety’s sake, when you have to weld in cargo holds?”

“A. Well, we usually have a fire extinguisher or water in the holds.” [109]

Did you so testify?

A. Yes, sir; I guess I did.

Mr. Gearin: Now, may I ask that Mrs. Mundorff mark this as Exhibit 7-B, please?

(A handwritten statement of Leo C. Riley was marked by the Clerk as Libelants’ Exhibit 7-B for identification.)

Q. (By Mr. Gearin): Mr. Riley, I am handing you—may I ask you first if you live at 2051 Southeast 141st Avenue?           A. Yes, sir.

Q. Did you live there on April 28th, 1958?

A. Yes, sir.

Q. Do you recall on April 28th, 1958, you gave a written statement to a Mr. Forrest Johnson, representing our office?

A. I don’t recall the date, but I do remember there was a man out there.

Q. Now, on these two pages of this document there appears at the bottom, “Read and found

(Testimony of Leo Riley.)

O.K., Leo C. Riley." Is that your signature and is that your handwriting? A. Yes, sir.

Q. Did you read that statement before you signed it? A. Yes, sir.

Q. I call your attention to this portion of the statement:

"There was a rung out of the forward ladder about the fifth rung up from the deck." [110]

Now, did I read that correctly from your statement? A. You did, sir.

Q. Does that refresh your memory at this time?

A. No; it doesn't.

Q. Do I read this correctly from the statement:

"The sparks then flew under the cargo which was piled about one foot to one and one-half feet away from the ladder we were working on."

Did I read that correctly from the statement?

A. Yes, sir.

Q. Does this also appear in your statement:

"We usually have a CO2 extinguisher with us but did not have one that particular night."

A. That is right.

Q. What is the fact now about whether or not you usually have a CO2 extinguisher with you?

A. We do, yes.

Mr. Gearin: We offer Exhibit 7-B into evidence for the purpose of impeachment.

Mr. Krause: Are you through with the witness?

Mr. Gearin: Yes, sir.

(Testimony of Leo Riley.)

### Redirect Examination

By Mr. Krause:

Q. Mr. Riley, I am a bit confused about your testimony. Your [111] last answer, I believe, was that you now do take a fire extinguisher with you when you go into the hold to do some welding?

A. Yes, sir.

-Q. Did you do that before; that is, prior to the fire on April 2nd, 1958? What is your best recollection on it?

A. I don't believe that we did, no.

Q. Did you either take a fire extinguisher or water with you when you went into the hold prior to April 2, 1958, to do any welding where there was cargo in the hold?

A. Well, prior to that time I hadn't done any welding in a hold where there was any cargo.

Q. With respect to the instructions as to what you should take down with you, what is your best recollection now—well, if you had not had occasion prior to this fire to weld in a hold where there was cargo, did you ever receive any instructions about what to take down with you when you were going to weld in a hold that had cargo in it?

The Court: I think I can answer that, Mr. Krause. If he never welded in a hold or didn't go down in a hold to do so, I don't think that there would be anything to that. Of course, if you want the witness to answer—



(Testimony of Leo Riley.)

Mr. Krause: It doesn't seem to me to be awfully important, but he seems to have contradicted himself between the Coast Guard and the statement that was given and his testimony here, [112] for that matter.

Q. Do you recall ever receiving any instructions at all as to what men going into a hold where there was cargo should do with respect to having fire-prevention facilities with them? That is, prior to the fire on April 2nd, 1958?

A. I just can't recall.

Q. Now, you continued to work for Albina for some time after April 2nd, 1958, did you?

A. Yes, sir.

Q. For about how long?

A. Oh, perhaps a year and five months, or something like that. I don't know. I have been jumping around.

Q. Have you since this fire on April 2nd welded in a hold where there was flammable cargo in it on any occasion?

A. No, sir; I haven't.

Q. Then on April 2nd is the only time you did weld when there was flammable cargo in the hold?

A. As nearly as I can recall, yes.

Q. Usually the holds are clear when you weld in them?

A. Yes, sir.

Mr. Krause: I think that is all.

(Testimony of Leo Riley.)

Recross-Examination

By Mr. Gearin:

Q. Mr. Riley, the fire occurred on April 2nd, 1958, did it [113] not?      A. Yes, sir.

Q. Did you work at all from the time that the fire started—did you do any further work at Albina between the time the fire started and the time that you testified before the Coast Guard?

A. Yes, sir; I did.

Q. Was that the period of time, between April 2nd and April 3rd, that you received your instructions about what to take in the hold with you when you welded?      A. I can't recall.

Q. But you don't deny that you gave that testimony at the Coast Guard hearing?

A. I can't deny that, sir.

Mr. Gearin: I have nothing further, sir. May I ask whether or not Exhibit 7-B is being received or if there is any objection?

Mr. Krause: No; I have no objection.

The Court: Admitted.

(The handwritten statement referred to was received in evidence as Libelants' Exhibit 7-B.)

Security Check & Discharge  
#715 Rec  
Gov. No. 9947

567 114.A #1

2051 S.E. 141<sup>st</sup> Ave.  
Portland, Oregon.

April 28, 1958.

My full name is Leo C. Riley.

I reside at the above address.

I am a welder & work out of the Boilermakers  
local # 72, S.W. 3<sup>rd</sup> & Clay St. Portland, OR.

On April 27, 1958 between 6:00 A.M. & 7:00 P.M.

I was a member of the welding crew that  
was working in the lower hold #5 of the S.S.  
Robert Luckenbach which was tied up at the  
Luckenbach dock in Portland.

Mr. Larson was the welder. I was the fitter.

Mr. Smith was the foreman.

There was a runy out of the forward ladder - about  
the fifth runy up from the deck.

There was a little piece of weld left from the  
old weld that had held the runy.

our equipment was all electric.

Mr. Larson struck an arc to burn off a weld off  
this little bit of old weld. a spark flew off &  
went to the floor & got underneath the piece  
of plywood that was blocked up there which we  
were using as a shield. The sparks then flew  
under the cargo which was piled about 1 foot to 1 1/2  
feet away from the ladder we were working on.

our piece of plywood was between the ladder & the  
cargo. This piece of plywood was 4' x 6' & had been  
used by the longshoremen in loading cargo.

It happened so quick & I usually turn my face  
away when an arc is struck so I can't tell  
if the sparks went over the top of or underneath  
the plywood shield. We stopped work at once because  
we could see smoke at once. We threw a bucket  
of water on it but the fire was underneath the cargo.

Read and Signed by Leo C. Riley



+ we couldn't get to it. It happened just as we were starting to do this job.

We saw we couldn't get it out. I made a dash up the ladder to the main deck to get a fire hose. The nearest one was on the main deck near hold #5. Mr. Smith ran to the engine room to ask them for pressure.

We lowered the hose down. Mr. Loran stayed in the hold & he grabbed the hose when I lowered it to him. I turned on the valves on the main deck.

But we got no water. I learned later that a section of pipe was out down in the engine room & that is why we could get no pressure.

Since there was nothing else we could do we waited for the Fire Dept. & they arrived in a short time. I stayed for about an hour after the fire Dept. got there & they were still fighting the fire when I left.

There was no fire extinguisher or hose handy in the hold. The nearest hose was up on the main deck & that had no water as explained above.

Usually we have where water hoses are located on ships & can get water if something catches on fire. We usually have a C.O. extinguisher with us but did not have one that particular night. It would not have done any good that night anyway because the fire was underneath the cargo & in a place hard to get at.

Mr. Smith, Mr. Loran & myself are all employees of Abner Engine & Machine Works.

There were just the 3 of us in the hold at the time.

The cargo was general cargo. There was barley & hemp as I was told. It is heavily wrapped up & you can't see what it was. Read an account of  
Leo C. Riley



(Testimony of Leo Riley.)

Redirect Examination

By Mr. Krause:

Q. The fire occurred on the evening of April 2nd, 1958, didn't [114] it?           A. Yes, sir.

Q. And you testified the next morning before the Coast Guard, didn't you?       A. Yes.

Q. Was there any chance for you to work between those two times?

A. At Swan Island; yes, sir.

Q. You did work at Swan Island. After the fire started on the Luckenbach vessel you went back to Swan Island?           A. Yes, sir.

Q. And you worked there until about midnight?

A. Yes, sir; 12:30.

Q. Then you went home?           A. Yes.

Q. Did you go back to work the next day before testifying at the Coast Guard hearing?

A. No, sir; I didn't.

Mr. Krause: I think that is all.

(Witness excused.) [115]

LEONARD LARSON

was produced as a witness in behalf of the Respondent Albina Engine & Machine Works and, having been first duly sworn, was examined and testified as follows:

Direct Examination

By Mr. Krause:

Q. Leonard Larson is your name?

A. That is right.

(Testimony of Leonard Larson.)

Q. Where do you live, Mr. Larson?

A. I live at 9306 Northeast Seventh, Vancouver, Washington.

Q. How long have you lived here in Oregon and Washington?      A. About eighteen years.

Q. You work for Albina?

A. That is right.

Q. You are still working for them?

A. Yes; I still work for them.

Q. You were working for them on April 2nd, 1958?      A. That is right.

Q. In what capacity were you working at that time?      A. I was employed as a welder.

Q. Are you still a welder now?

A. Yes; I am.

Q. You do the same kind of work?

A. I do the same kind of work.

Q. Was this fire on the Luckenbach the only fire that you have ever participated in on [116] shipboard?      A. That is the only one, yes.

Q. You have never been in one before or afterwards?      A. Never have been, no.

Q. I suppose you got down to the ship around 6:00 o'clock?      A. About that time; yes, sir.

Q. Did you go down with Riley or Smith?

A. Yes; I went down with—I was working at the Albina shipyard. I was dispatched there to the Luckenbach Dock.

Q. Did you and Riley go down together?

A. Yes, yes.

Q. When you got there was Smith already



(Testimony of Leonard Larson.)

there?           A. Smith was there, yes.

Q. The Albina Engine & Machine Works is only a couple of blocks away from the Luckenbach Dock, isn't it?           A. Not very far, no.

Q. Is it more than a couple of blocks?

A. Yes; a little bit more.

Q. When you got there I suppose you helped them get the welding machine over alongside the No. 5 hatch?           A. Yes.

Q. Then you went on the ship. Did you see Riley cut the rung for the ladder?

A. No. The first thing I did was attach the ground lead onto the ship, put the ground lead on board the ship.

Q. You attached it. He couldn't cut this bar until you had [117] done that, could he?

A. No. He done the cutting. I was taking care of the welding part of it.

Q. Then he did the cutting?           A. Yes.

Q. Then all three of you went down in the No. 5 hatch?           A. That is right.

Q. When you got there will you just describe generally what the conditions were around this forward ladder?

A. Smith built a fire protection around it.

Q. What did he use to do that?

A. He used plywood boards, as far as I could see.

Q. Between the cargo that was close to the ladder and the ladder there were plywood boards?

(Testimony of Leonard Larson.)

A. Plywood, yes.

Q. What are those boards used for on the ship usually, do you know?

A. Well, they are used for putting up cargo, I guess.

Q. They are called walking boards, aren't they?

A. Yes.

Q. Do they use them for walking on cargo, the longshoremen? A. I suppose they are, yes.

Q. Did you see what kind of cargo there was just beyond that barricade?

A. Yes; I did. [118]

Q. What kind of cargo was it?

A. It looked like it was burlap.

Q. Was it in sacks? A. Baled.

Q. Burlap in bales? A. Yes.

Q. Did it look like new or old burlap?

A. Well, I don't remember. It didn't look like new burlap, I don't think.

Q. Now, were you handling the welding rod?

A. Yes.

Q. And did you attempt to burn off this old welding material that was stuck on the ladder?

A. That is right, yes.

Q. Just tell us how you do that; that is, what did you do?

A. Well, I put the rod in my stinger, and Lester Smith told me to strike the arc and burn the burr off so he could stick the rung in there. I just got started and he hollered to hold it, and I stopped. There was a little fire going in the burlap.

(Testimony of Leonard Larson.)

Q. When you started? A. Yes.

Q. You struck your arc, didn't you?

A. Yes.

Q. And then did you put it onto this gob of welding material? A. Yes. [119]

Q. Did any of the material fall down onto the floor? A. Apparently it did, yes.

Q. Did you notice it fall down?

A. Well, you can't see through your hood, no.

Q. You had a hood on? A. Yes.

Q. Then you are looking through some glass at the work that you are doing? A. Yes.

Q. Was that hood fixed in such a way that you could easily remove it from in front of your face?

A. Oh, yes; yes.

Q. You just keep it on and shove it upward, do you? A. Yes.

Q. So you can see out from under it?

A. Yes.

Q. After Smith told you to quit your welding or burning, did you?

A. Yes; we stopped, and then there was a little fire going, and they grabbed a water can there and threw water on it to stop it, but we couldn't get at it.

Q. You say you saw fire? A. Yes.

Q. Where was the fire?

A. The fire was in the burlap, way underneath the burlap.

Q. The water was thrown on there and that didn't put it out? [120]

(Testimony of Leonard Larson.)

A. No; it didn't put it out.

Q. And you tried to stomp it out?

A. I tried to stomp it out.

Q. It kept on burning in between the bales?

A. Yes.

Q. You remained down in the hold for awhile, did you?

A. Yes; I did. They immediately left and——

Q. What was that?

A. They immediately left, and Smith told Riley to get the fire line. And they immediately left, and I climbed up on a roll of paper about halfway in the middle of the hatch, of the hold, and was holding the hose waiting for the water to come.

Q. You were holding the hose then; is that right?      A. Yes; that is right.

Q. You got no water while you were down there?

A. No, I got no water.

Q. Can you give us an idea about how long you were there holding the hose waiting for the water to come before you finally came up?

A. I got out of there, I figured, in about six minutes.

Q. Tell us what had been done in that time?

A. Well, I went down in the hold. I couldn't tell what was being done. They were on topside and I was waiting for the water, and I couldn't tell exactly what to do.

Q. What was the condition of the area where the fire was? [121]

A. That was burlap, and the smoke was getting

(Testimony of Leonard Larson.)

heavier, the burlap was burning heavy—started to burn heavy.

Q. You were about in the middle of the hatch on a roll of paper?

A. Yes; on a roll of paper.

Q. Did the smoke reach over to where you were?

A. Well, it didn't get too bad. It come out of the—come up from under the hatch and out through the forward end of the hatch.

Q. Went up through the hatch opening up above?      A. Yes.

Q. You think you remained down there about six minutes?      A. Yes, I think so.

Q. By that time had the Fire Department arrived?

A. Well, when I got up out of the hold the Fire Department was just unrolling their hose.

Q. They had just arrived?      A. Yes.

Q. And were running some hose out?

A. Running the hose out.

Q. Do you know what you could have done to that fire if you had gotten water down there?

A. I could have put it out.

Mr. Wood: I object on the ground of competency, your Honor. [122]

The Witness: What?

Mr. Krause: Never mind. He is talking to the Judge.

The Court: How long had you been a welder?

A. I have been a welder for—I started welding in 1931, acetylene welder.

(Testimony of Leonard Larson.)

The Court: During that period of time you have had other little fires start, no doubt?

A. Oh, yes; yes.

The Court: And you have put them out?

A. Oh, yes.

The Court: He may answer.

Q. (By Mr. Krause): You saw how big the fire was there before you came up out of the hold? You could see where it was burning?

A. Yes; I could.

Q. You could see how big the blaze was?

A. Yes.

Q. If you had gotten water through that hose, then, could you have extinguished the fire?

A. I could have, yes. I am sure I could have.

Q. To how big an area was it confined at that time?

A. Oh, I would say an area about the size of that desk there.

Q. Which desk?           A. This one here.

Q. The one at which Mrs. Mundorff is [123] sitting?           A. That is right.

Q. Those were bales of burlap?

A. Bales of burlap.

Q. Had the fire gotten hot enough to do any damage to the steel of the vessel at that time?

A. No, no.

Q. Was there any of the paper cargo involved at that time?

A. No; there was nothing in the paper cargo; no.

Q. Now, with the fire as you have described it

(Testimony of Leonard Larson.)

in among the bales—have you had occasion to use CO<sub>2</sub> extinguishers?

A. Do I know how to use a CO<sub>2</sub>?

Q. Yes.           A. Oh, yes.

Q. You have used them?           A. Oh, yes.

Q. Would that have been of any effect against the fire in among the bales of burlap?

A. I don't think so. I don't think a CO<sub>2</sub> would have helped us any.

Q. A stream of water from a 2½-inch hose, would that have done any good?

A. That would have done it, yes.

Q. With respect to the blaze in among the bales where you noticed the fire, was it down near the deck or up above the deck? [124]

A. I don't understand you, sir.

Q. Where was the fire with respect to the deck; that is, in these bales of sacks? Where was the fire? Was it down close to the deck or up high?

A. It started underneath, started close to the deck, yes.

Q. Started quite close to the deck?

A. Yes; the tank tops.

Q. Would you say about how many minutes it was from the time the fire started until the first water was poured onto the fire by the Fire Department?

A. How many minutes? I would say it was, oh, ten minutes, anyway, before the firemen started——

Q. Before the first water went in?

A. Yes.

Mr. Krause: You may cross-examine.

(Testimony of Leonard Larson.)

### Cross-Examination

By Mr. Gearin:

Q. Mr. Larson, have you ever had occasion to use a CO<sub>2</sub> fire extinguisher on a fire in burlap?

A. No; I never did; no.

Q. You don't know whether or not a CO<sub>2</sub> fire extinguisher would have done any good as soon as Mr. Smith announced the fire, do you?

A. Well, if it had got too big a start I don't think it would [125] have helped much.

Q. You mean from the time that Mr. Smith first called out that there was a fire and you threw your hood back the fire was so well started that a CO<sub>2</sub> extinguisher would not have done any good?

A. Well, we had a five-gallon can of water, container of water, and it didn't put it out.

Q. Was it five gallons of water?

A. I don't know. Three gallons, or whatever that is.

Q. Now, if you had taken a fire line down in the hold with you, you would have had the fire out, wouldn't you?      A. That is right.

Q. You have told us that you have had no experience fighting a burlap fire with CO<sub>2</sub>?

A. Never did, no.

Q. When you struck this arc were you standing or were you sitting?      A. I was standing.

Q. Do you recall testifying before the Coast Guard the day after the fire?      A. I do.



(Testimony of Leonard Larson.)

Q. Will you advise us whether or not—maybe I better have the transcript. Would you hand the transcript, which is Exhibit No. 1, to the witness, please? Do you recall, Mr. Larson, being examined by Lieutenant Commander Mason the day after the fire? [126]

A. I do.

Q. At the Coast Guard hearing? A. Yes.

Q. Do you recall being asked this question by Lieutenant Commander Mason and giving these answers:

“Q. Are there any instructions that you have ever been issued by your company with respect to maintaining any fire-prevention equipment on hand? A. Yes; there has been; yes.

“Q. What specifically have you been instructed to do?

“A. Either pull out—put out—pull out a fire line or use a CO<sub>2</sub> bottle, or something like that.

“Q. In other words, to keep some fire-fighting apparatus on hand in readiness; is that it?

“A. Yes; that’s right.

“Q. Are these written instructions or are they verbal? A. Verbal instructions.”

Did you so testify? A. Yes; I did.

Mr. Gearin: I have nothing further. Thank you.

The Court: Mr. Wood, do you have anything?

Mr. Wood: A little bit, your Honor.

Mr. Krause: I might say a word about that, your Honor. [127] He had not been asked those questions preliminarily. There is nothing to impeach him on that I can see.

(Testimony of Leonard Larson.)

The Court: It may be true. It has already been answered now, though, Mr. Krause. It is true it may not have been proper cross-examination, but it is in the record and it will stand now, anyway.

Mr. Wood, do you want to proceed?

Mr. Wood: Yes. It will not be very long.

#### Cross-Examination

By Mr. Wood:

Q. Mr. Larson, I am looking at your Coast Guard testimony—I will show it to you if you want me to—and I notice that you said there that you got your instructions from Smith while you were at the plant at Swan Island between 6:00 and 6:30. Do you recall that?      A. I did what?

Q. That while you were at Swan Island at the plant is when Mr. Smith got hold of you and told you about this welding job, and that time was between 6:00 and 6:30. Do you remember testifying like that?      A. At Swan Island?

Q. Yes.

A. No. We was at Luckenbach Dock when we got the instructions.

Q. I had better show you this, I guess. [128]

The Court: Do you have any idea what page it is?

Mr. Wood: I will use the original.

The Court: We have a copy of that in evidence, do we not? Make reference to the page number, the exhibit number and the page.

Q. (By Mr. Wood): Mr. Larson, I am not trying

(Testimony of Leonard Larson.)

to trap you. I just want to remind you of what you said. I will ask you if this is what you testified to——

The Court: What page is it, Mr. Wood?

Mr. Wood: It begins at Page 52.

The Court: This is what exhibit number?

Mr. Wood: Exhibit No. 23.

“Q. And how did you first receive the information regarding this job?

“A. From the foreman, Lester Smith.

“Q. And you are a member of some union, are you, Mr. Larson? A. 72—Local 72.

“Q. That is of what, sir?

“A. Boilermakers’ Union.

“Q. I see. Is Mr. Smith and Mr. Riley both members of the same union? A. That’s right; yes.

“Q. Now, had Mr. Smith given you any specific instructions regarding this particular job, as to any [129] particular time to be aboard?

“A. He contacted me down at the company’s plant and told us what he wanted done and what he wanted done on the—he wanted us to pull a—string a lead out to No. 5 hold.

“Q. To string a lead out? A. Yes.

“Q. In other words, a welding lead to No. 5 hold? A. Yes.

“Q. And what else? Anything else?

“A. No; that is all he said at the present.

“Q. Did he give you any particular time as to when to do this? A. To what?

“Q. Any particular time to be aboard to do

(Testimony of Leonard Larson.)

this?           A. No; he didn't; no.

“Q. He didn't specify a time?           A. No.

“Q. Now, what time was this that he gave you these instructions?

“A. It was, I would say, around 6:00—between 6:00 and 6:30.

“Q. You stated this was while you were down at your plant?           A. Yes. [130]

“Q. At Swan Island?           A. Yes.”

Does that refresh your memory any?

A. We weren't at Swan Island, though. We was at the yard, at Albina Yard.

Q. You said “Yes” here. Then what did you do then?

A. I got my car and went down to Luckenbach Dock.

Q. In your own car?           A. Yes.

Q. But the point is whether you were at Swan Island or your yard, did you get these instructions from Smith between 6:00 and 6:30 or an earlier time?

A. We got those instructions from Smith—it was possibly a little before 6:00.

Q. A little before 6:00?           A. Yes.

Q. So it is not quite accurate here?

A. No.

Q. There is another thing I wanted to ask you about, please.

Mr. Gearin: Your Honor, for the purpose of the record, the references to the transcript made by Mr. Wood in his exhibit are contained on Pages

(Testimony of Leonard Larson.)

29 and 30 of Exhibit No. 1, the Coast Guard transcript.

The Court: Thank you, Mr. Gearin.

Mr. Gearin: I will say that they appear to be identical. [131]

Q. (By Mr. Wood): I want to ask you this, Mr. Larson: When you were down in the hold there didn't you have some trouble with the welding machine, so that Riley went up out of the hold again to fix the welding machine on the deck, and he had to do something with it before you could make the thing work? Isn't that a fact?

A. I don't remember whether he did or not. I don't remember.

Q. I want to refresh your memory on that, then. The only importance of this is that it illustrates the time that went by. I am going to call your attention to the testimony on Pages 56 and 57.

The Court: This is still Exhibit 23?

Mr. Wood: Yes, your Honor. This is before the Coast Guard.

“Q. Mr. Smith—did he place the other rung in place for you to start welding?”

“A. Yes; he did; yes.

“Q. Did he?”

“A. The welding machine wasn't working to start with and Riley went out of the hold and then come back down again, and then we started to work.”

Do you remember that?

A. Well, I think so, yes.

(Testimony of Leonard Larson.)

Q. Do you know how long that took, that time when the welding machine wouldn't work and somebody had to go fix it? [132]

A. It wouldn't take very long, I don't suppose.

Q. Can you estimate it in minutes, how much time that was?

A. Oh, I would say a couple or three minutes, four minutes or five, somewhere along in there.

Q. You think that from the time the fire started until the time the Fire Department had water was about ten minutes? Is that what you think?

A. Yes.

Q. I only have one more question: How high was the rung on the ladder above the ceiling?

A. It was the third rung up, as I recall. I remember it as being the third rung up.

Q. How high would that be above the ceiling?

A. It would be about three feet up.

Q. So that would be within one foot of the top of the walking boards, wouldn't it?

A. Yes.

Q. Isn't it quite possible that some of these sparks, at least, flew over the walking board instead of going underneath?

A. They could have.

Q. You don't know whether they did or not?

A. No; I don't know whether they did or not, because I had my hood on.

Mr. Wood: I think that is all. Thank you.

Mr. Gearin: Nothing further. [133]

Mr. Krause: Nothing further, your Honor.

(Witness excused.)

Mr. Krause: I have one or two additional witnesses, your Honor.

The Court: It is about time for adjournment until tomorrow morning, anyway.

(Whereupon, an adjournment was taken until Thursday, January 7, 1960, at 9:30 a.m.)

January 7, 1960

(Court reconvened, pursuant to adjournment, at 9:30 a.m. and proceedings herein were resumed as follows:)

Mr. Gearin: I have presented to the Clerk, your Honor, the amendments as you requested in the form I dictated into the record yesterday.

The Court: Yes. Mr. Wood and Mr. Krause, are you ready to proceed?

Mr. Krause: Yes, your Honor. I would like to get my opponents here to stipulate for the record that we measured the desk at which Mrs. Mundorff is seated. One of the witnesses described the size of the fire as being the size of that desk.

The Court: That is right.

Mr. Krause: It is eight feet long, 39 inches wide and 40 inches high.

Mr. Gearin: Yes.

Mr. Wood: That is all right, yes. I held one end of the tape.

The Court: The Court will consider those measurements as correct.

Mr. Krause: We will call Mr. Sutherland. [135]

## JOHN SUTHERLAND

was produced as a witness in behalf of the Respondent Albina Engine & Machine Works and, having been first duly sworn, was examined and testified as follows:

## Direct Examination

By Mr. Krause:

Q. Your name is John Sutherland?

A. That is right.

Q. How long have you been a resident of Portland?           A. Forty-five years.

Q. You are employed by whom?

A. Albina.

Q. What is your official position with Albina Engine & Machine Works?

A. I am Assistant Secretary.

Q. Are you acquainted with Herbert Sterling?

A. Yes.

Q. For how many years have you known him?

A. Probably twelve years.

Q. During that time whom was he employed by?

A. He was employed as the Port Engineer for the Northwest area for Luckenbach Steamship Company.

Q. Where was his principal office?

A. In Seattle.

Q. Did he on occasions come to Portland?

A. Oh, yes. [136]

Q. In connection with company business?

A. Oh, yes.



(Testimony of John Sutherland.)

Q. What type of business did he represent the company on?

A. Well, he handled all their repairs, alterations and other maintenance of their vessels in this area.

Q. Did he have an assistant, too, who worked at that line of work?           A. Yes.

Q. What was his name?

A. Well, he has had various assistants. He had Jim Saunders until his death, and just recently he has had George Arway as an assistant.

Q. During this period of time did you do repair work and alteration work on the Luckenbach ships?

A. Yes.

Q. Would you tell us just who authorized that work and how the authorizations were given?

A. Well, normally the work was authorized verbally at the time that the work was put in hand, and then it was later written up in detail and after the work was accomplished it was confirmed by a written order.

Q. By "verbally," do you mean orally?

A. Orally.

Q. Who generally authorized the doing of the work for Luckenbach? [137]

A. Usually it was Herb Sterling or his assistant.

Q. Can you tell us how large those jobs were that were authorized orally by Mr. Sterling?

A. Well, actually there was no limitation. We did hundreds of thousands of dollars worth of work for them on an oral basis.

(Testimony of John Sutherland.)

Q. Were some of those jobs that were orally authorized jobs involving more than \$30,000?

A. Oh, yes.

Q. How was the determination made regarding the repairs that were required by the Robert Luckenbach after the fire on April 2nd, 1958?

A. Would you repeat that?

Mr. Krause: Read the question.

(Last question read.)

A. There was a survey made by the owner's representative of the vessel. Our people were present, and the Salvage Association was present; that is, the U. S. Salvage Association, and the Coast Guard and the American Bureau were present.

Mr. Gearin: You mean the American Bureau of Shipping?

A. That is right.

Mr. Krause: May I have the Bailiff hand the witness Albina's Exhibit 44?

Q. What is the document that you have there?

A. This is a copy of the survey made by the U. S. Salvage Association. [138]

Q. Whom was the survey made by? That is, who signed it for the Salvage Association?

A. Mr. K. A. Webb, Surveyor.

Q. Is he a surveyor that has been with the U. S. Salvage Association for many years?

A. That is right.

Q. And located in Portland?

A. That is correct.

(Testimony of John Sutherland.)

Q. Who were the representatives of Luckenbach Company that attended at that time?

A. H. W. Sterling was the owner's representative.

Q. Those other persons named on the first sheet of that survey as participating, did they represent those various interests that are named there?

A. To my knowledge, they did. Brewer and Bailey, of course, are from Albina, and Jim Slater from Pillsbury and Martignoni. And I know these other people from the American Bureau of Shipping and the United States Coast Guard. Of course, I don't know that they were in attendance, but I assume that they were.

Mr. Gearin: May I ask a question on voir dire to straighten myself up?

The Court: Yes.

Mr. Gearin: Were you present at the survey?

A. No.

Q. (By Mr. Krause): Now, does that Exhibit 44 list the repairs [139] to be made to the Robert Luckenbach? A. Yes, it does.

Q. And did Albina make those repairs that were stated in there as necessary?

A. Yes, we did. We accomplished these repairs.

Q. Will you just tell the Court how, if at all, you were authorized to do the work?

A. We were authorized by Herb Sterling to accomplish the repairs. I had cautioned our people in the field not to make the repairs until we did have authorization, and in the course of events Herb

(Testimony of John Sutherland.)

Sterling orally authorized us to make these repairs.

Q. What, if anything, was said about a written order for the repairs?

A. Well, we requested a written order from Mr. Sterling, and he indicated that it would be forthcoming in the normal manner, but, in any event, to get along with the repairs and he would cover us at a later date.

Q. Did you have any conversation with Mr. Sterling at any later date regarding that written order for the work?

A. He informed me at a later date that his New York office had advised him not to issue a written order.

Q. So you did not get a written order?

A. That is right.

Q. When did this information from Mr. Sterling come with [140] respect to the time when the repairs were made?

A. To the best of my recollection, it was after the repairs were accomplished.

Q. Did Albina bill the Luckenbach Steamship Company for the cost of the repairs?      A. Yes.

Q. Where was the bill sent?

A. The bill was sent to Seattle, and in turn they sent it on to New York or Brooklyn.

Q. When you say Seattle——

A. Their Seattle office.

Q. To whom was it directed?

A. It wasn't directed to anyone in particular.

Q. Just the Luckenbach office?

(Testimony of John Sutherland.)

A. That is right.

Q. Did the Luckenbach Company pay the bill?

A. No.

Q. Did they indicate whether they were going to pay the bill or not?

A. They indicated that they were not going to pay the bill.

Q. Now, would you look in this order and tell us what the amount was of the cost of repairs?

A. The total billing was \$28,933.89.

Q. Does that survey report contain all of the items going to make up the bill? [141]

A. Yes.

Q. That was all labor and material, dry-docking expenses, and so on? Were they all included?

A. That is correct.

Q. Did that bill show any item of profit?

A. No, this billing was made without profit.

Q. Do you know what the circumstances were regarding the billing without profit?

A. Yes. The work was accomplished before the figures were compiled, and we were advised by the U. S. Salvage Association, inasmuch as they had to approve these figures, to figure it on a non-profit basis; that inasmuch as we were involved in this thing we should figure it on a non-profit basis. That was perfectly agreeable to us inasmuch as we were dealing with a very good customer.

Q. That was in order to have Mr. Webb approve it as surveyor? A. That is right.

Q. For the U. S. Salvage. He told you not to

(Testimony of John Sutherland.)

figure any profit in?           A. That is correct.

Q. Does it include your overhead and administrative expenses?

A. General and administrative costs, yes.

Q. But no profit?           A. That is right.

Mr. Krause: I think you may cross-ex- [142]  
amine.

Mr. Gearin: I have no questions.

### Cross-Examination

By Mr. Wood:

Q. Mr. Sutherland, were you present when the arrangements were made between Mr. Sterling and your people about making these repairs?

A. Well, it was through me that the repairs were authorized.

Q. Whom did you deal with?

A. Mr. Sterling.

Q. Direct?           A. That is correct.

Q. Did you have your men go aboard the ship and make the repairs without any specific authorization from Sterling but merely with his permission that you could do so?           A. No, no.

Q. What?           A. No, we didn't.

Q. It wasn't that way?           A. No.

Q. Was there any understanding that you know of on the part of Mr. Husa, President of your company, and Mr. Sterling that these repairs would be made for the account of your own company since yours was the fault?

(Testimony of John Sutherland.)

A. No, I am quite certain that there was no understanding—— [143]

Q. Nothing like that?           A. No.

Q. You were not present, however, at the conversations between Mr. Sterling and Mr. Husa, were you?

A. I doubt very much whether Mr. Sterling and Mr. Husa even discussed it.

Q. I was struck by your statement that Mr. Sterling sent the bill apparently on to New York, his head office, and there it was rejected. Is that what you said?           A. That is correct.

Q. Was it the custom for Mr. Sterling in ordering any repairs on ships from you to get authorization or ratification from his New York office?

A. No. I would like to clarify that a little bit. Not to my knowledge. He may have discussed it with New York prior to the time he put the order in.

Q. You don't know about that?

A. That is right.

Q. However, in this particular instance it was New York that made the final decision about this bill, wasn't it?           A. That is right.

Mr. Wood: That is all.

Mr. Gearin: That is all.

(Witness excused.) [144]

Mr. Krause: I would like to offer in evidence again this Respondent Albina's Exhibit 45 as showing the repairs made to the vessel and the amounts

charged for the various items, the cost of making the repairs, and the people who participated in determining what repairs should be made.

Mr. Gearin: That has been admitted.

The Court: It was admitted for a special purpose.

Mr. Gearin: I have no objection to it being admitted generally.

Mr. Wood: I haven't either.

The Court: It is admitted generally.

(The Survey Report referred to was received in evidence as Respondent Albina Engine & Machine Works Exhibit 45.)

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RESPONDENT'S EXHIBIT No. 45

United States Salvage Association, Inc.  
99 John Street, New York 38, N. Y.

Case No. 80-3279

Cargo Damage A/C Fire

April 2, 1958

Portland, Oregon  
September 16, 1958.

Albina Engine & Machine Works  
S.S. Robert Luckenbach

Conditions

All services of this Association are offered and this and all other reports and certificates are issued on the following conditions:



Respondent's Exhibit No. 45—(Continued)

(1) While the officers and the Board of Directors of United States Salvage Association, Inc., have used their best endeavors to select competent surveyors, employees, representatives and agents and to insure that the functions of the Association are properly executed, neither the Association nor its officers, directors, surveyors, employees, representatives or agents are under any circumstances whatever to be held responsible for any error of judgment, default or negligence of the Association's surveyors, employees, representatives or agents nor shall the Association or its officers or directors under any circumstances whatever be held responsible for any omission, misrepresentation or misstatement in any report or certificate.

(2) That under no circumstances shall this report or certificate be used in connection with the issuance, purchase, sale or pledge of any security or securities, or in connection with the purchase, sale, mortgage, pledge, freighting, letting, hiring or charter of any vessel, cargo or other property, and if so used this document shall be null, void and of no effect and shall not be binding on anyone.

The terms of these conditions can be varied only by specific resolution of the Board of Directors of the Association and the acceptance or use of the services of the Association or of its surveyors, employees, representatives or agents or the use of this or any other report or certificate shall be construed to be an acceptance of the foregoing conditions.

## Respondent's Exhibit No. 45—(Continued)

This Report Is Exclusively for the Use  
and Information of Underwriters

Report of Survey made by the undersigned surveyor of the United States Salvage Association, Inc., on April 3, 5 & 10, 1958, at the request of Jewett, Barton, Leavy and Kern, Portland, Oregon, on shipments of cargo, as they lay in the No. 4 and 5 holds of the S.S. "Robert Luckenbach" 7882 Gross Tons, 245923 Official Number, Luckenbach Steamship Company, Owner and Operator, while the vessel lay afloat at the Luckenbach Terminal, Portland, Oregon, and while the cargo was lying on the dock and on barges, subsequent to discharge from the vessel, in order to ascertain the nature and extent of damage alleged to have been sustained in consequence of a fire in No. 5 Lower Hold, on April 2, 1958, at 1815.

## Attending:

Messrs. H. W. Sterling, representing Owners of Vessel; V. C. Burdick, representing Owners of Dock; R. S. Brewer, representing Albina Engine & Machine Works; James Slater, representing Pillsbury & Martignoni; W. O. Haines, representing Pillsbury & Martignoni; U. S. Coast Guard Inspectors and other interested parties.

It is reported that fire was discovered in No. 5 Lower Hold, forward, at 1815 April 2, 1958, and alarm was sounded immediately, bringing units of the Portland Fire Department to the scene, including fire boats and rolling equipment. The fire was

Respondent's Exhibit No. 45—(Continued)

brought under control at 1945, April 2, 1958, and subsequent to survey on April 3, 1958, damaged cargo was discharged from the vessel to a barge under the supervision of members of the Portland Fire Department who were detailed to remain on the spot until danger of further outbreak had passed.

The major portion of the cargo which was discharged to a barge under the supervision of the members of the Portland Fire Department was debris and charred pieces of cargo, with no salvage value whatsoever.

Cargo stowed in No. 4 Tween Deck and Lower Hold, and in No. 5 Lower Hold, which was not completely destroyed by the fire, was subsequently discharged to the dock and to barges for further disposal. This cargo is covered under thirteen (13) separate bills of lading, which are listed below, with details of damage, extent of damage and of salvage.

Vessel—S. S. Robert Luckenbach—Voy. 910

Lot #1

B/L #B-12-R 2/19/58

Shipper—Elliot Addressing Machine Co., Cambridge, Mass.

Consignee—W. E. Finzer & Co., 215 S.W. Park, Portland, Ore.

Marks—11681

Commodity—1 Crated Addressing Machine

Weight—368#

Remarks: No exceptions at loading port.

## Respondent's Exhibit No. 45—(Continued)

The crate containing this machine was badly burned and charred, and the machine itself was badly warped, with no salvage value except for the motor and spare parts which were not damaged.

Total value landed at Portland	\$708.52
Salvage obtained from motor and parts	50.00
Total loss	\$658.52

Lot #2

B/L #B-33-R

Shipper—Pejepscot Paper Division, Hurst Publishing Co., Inc., Brunswick, Maine.

Consignee—School District No. 1, Storeroom, 115 N.E. 6th, Portland, Oregon.

To the order of—Fraser Paper Co., 25 N.W. Front St., Portland, Ore.

Marks—Order #C-23499.

Commodity—1247 Ctns. of construction paper & school practice paper.

Gross Weight—83,159#.

Net Weight—79,000#.

Remarks: No exceptions at loading port.

This cargo was all fire or water damaged as a result of the fire. Part of the shipment was discharged as debris to one of the barges and the remainder was discharged to the dock. Mr. Ed Fraser and the city storekeeper examined and checked the portion of the shipment which was discharged to the dock as being only partially damaged from water and none of the paper was acceptable to the storekeeper for the Portland School District No. 1. The Fraser

## Respondent's Exhibit No. 45—(Continued)

Paper Company agreed to accept that portion of the shipment which was wrinkled and wet, but salvageable on a 50% of cost value. The following are details of cost, salvage, and loss.

1. Original sound value	\$15,652.76	
2. 50% of value of paper accepted by the Fraser Paper Company	1,903.82	
3. Labor separating damaged paper from good paper	57.00	
4. Salvage from scrap	177.88	
	<hr/>	
Final Loss		\$13,628.06

## Lot #3

B/L #P-11-R 2/25/58.

Shipper—Hershey Chocolate Company, Hershey,  
Penn.

Consignee—Hershey Chocolate Co., Portland, Ore.

Commodity—2121 Bxs. of confectionery, 1720  
Bxs. of cocoa, 1756 Ctns. of chocolate syrup,  
1 Ctn. of thermometers.

Total Weight—127,172#.

This cargo was stowed in No. 4 Tween Deck and the main cause of damage to this particular shipment was water and smoke, with a loss outlined as follows:

1—Fire damage	\$ 145.02
2—Water damage	2,280.00
3—Smoke and/or water damage	20,371.50

Of the total shipment, the following is a breakdown of the various units which were in the vessel during the fire, and that which was discharged prior to the fire.

## Respondent's Exhibit No. 45—(Continued)

Type of Product	Total in Shipment	Discharged Prior to fire	In Vessel During fire
Confectionery	2,121 ctns	1,551 ctns	570 ctns
Cocoa	1,720 ctns	1,447 ctns	273 ctns
Syrup	1,756 ctns	6 ctns	1,750 ctns
Thermometer	1 ctn	1 ctn	—
Totals	5,598 ctns	3,005 ctns	2,593 ctns

Subsequent to extinguishing of the fire the cargo in the holds was discharged to the dock, where it was again examined by all in attendance and it was mutually agreed that the cargo of cocoa products had been subject to smoke, heat and water damage.

In order to recover and recondition the greatest possible amount of the damaged cargo, it was also agreed that the best procedure would be to ship all salvageable cargo back to the manufacturer at Hershey, Pennsylvania, and that cargo which was not salvageable and unfit for human consumption should be destroyed by burning.

This procedure was carried out and the following are recapitulations of cargo shipped back to the factory, destroyed by burning, pilferage and shortage.

1. Cargo returned by rail car to Hershey Chocolate Co., Hershey, Pa.

Quantity	Item Code No.	Quantity	Item Code No.
223 ctns	40	10	163
99	104	36	165
9	120	126	300
24	154	210	305
23	155	42	309R
14	51	485	310
258	52	750	315
46	332	42	340
48	333		
10	46		

Total shipped back to factory .....2,455 ctns.

Respondent's Exhibit No. 45—(Continued)

2. Cargo noted short on vessel and considered destroyed as a result of fire.

Quantity	Item Code No.	
2	40	
1	104	
4	134	
3	190	
2	191	
6	148-1	
1	310	Short and destroyed as a result of fire
		.....19 ctns.

3. Cargo declared unfit for human consumption and unsalvageable, taken to incinerator to be burned.

Quantity	Item Code No.	
5	154	
4	155	
41	40	
45	104	
		Total unsalvageable cargo to be burned .....95 ctns.

4. Pilferage—Storeroom exception—265  
B/L P-11R

2/25	217
3/30	104
2/16	154
1	115-2
1	55-2
3	134
3	2
1	40-2
7	191

Lot #4

B/L D-13-R 2/19/58.

Shipper—Carl Berwick & Co., 81 Thomas St.,  
Worcester, Mass.

Consignee—Peyton Bag Co., 33 S.E. Yamhill,  
Portland, Ore.

Marks—Same.

Commodity—100 bales of 2nd hand bags.

Total Weight—2,580#.

Respondent's Exhibit No. 45—(Continued)

Remarks: No exceptions noted at loading port.

Discharged from vessel April 3, 1958. Total sound value of cargo \$5,794.07.

This cargo was stowed in No. 5 Lower Hold and subsequent to extinguishing of the fire, 43 bales which were water damaged were discharged to the dock, and 57 bales which were fire damaged were discharged to the barge on the offshore side of the vessel.

Those bales numbering 57, which were fire damaged were considered a total loss with no salvage value, but the bales which were water damaged were offered as salvage, and two (2) bids were extended, one for \$720.00 and one for \$750.00 from Sugarman Bros., of San Francisco. The bid of \$750.00 was accepted and the 43 water damaged bales were thus sold.

Final loss .....\$5,044.07

Lot #5

This cargo was discharged from the S. S. Marine Snapper at Los Angeles, California, on voyage #906 and reloaded into the S. S. "Robert Luckenbach" at Los Angeles for Portland.

B/L Nos. NK-16-R Marine Snapper.

A-1-R Robert Luckenbach.

Shipper—George LaMonte & Son, Nutley, N. J.

Consignee—Blake Moffitt and Towne, Portland, Oregon.

Marks—As above.



Respondent's Exhibit No. 45—(Continued)

Commodity—2 ctns. of printing paper,  
2 ctns. of printing paper.

Total Weight—580#.

Remarks: No exceptions.

No trace of this cargo was found and it was adjudged a total loss with a sound value of \$195.48.

\$195.48

Lot #6

This cargo was discharged from the S. S. Marine Snapper at Los Angeles, California, on voyage #906 and reloaded into the S. S. "Robert Luckenbach" at Los Angeles for Portland.

B/L Nos. NK-32-R Marine Snapper.

A-1-R Robert Luckenbach.

Shipper—George LaMonte & Son, Nutley, N. J.

Consignee—Zellerbach Paper Co., Portland, Ore.

Marks—#51237.

Commodity—7 ctns. printing paper.

Weight—917#.

No trace of this cargo was found and it was adjudged a total loss with a sound value of \$254.70.

\$254.70

Lot #7

B/L No. D-4-R 2/11/58.

Shipper—H. S. Bernstein, Taunton, Mass.

Consignee—Leonetti Furniture Co., Portland,  
Oregon.

Marks—Same.

Respondent's Exhibit No. 45—(Continued)

Commodity—1 bale of cotton piece goods.

Weight—326#.

Remarks—No exceptions.

This bale of cotton piece goods outturned badly burned and was adjudged a total loss with a value of \$301.83.

\$301.83

Lot #8

This cargo was discharged from the S. S. Marine Snapper at Los Angeles, California, on voyage #906 and reloaded into the S. S. "Robert Luckenbach" at Los Angeles for Portland.

B/L NK-33-R Marine Snapper.

A-1-R Robert Luckenbach.

Shipper—Duro-Dyne Company, Farmingdale, Long Island, N. Y.

Consignee—Pacific Metal Co., Portland, Oregon.

Marks—Same.

Commodity—14 ctns. deck connectors.

Weight—900# :

Remarks: No exceptions. Discharged April 3, 1958.

This cargo was discharged in error ex the "Marine Snapper" at Los Angeles and forwarded to Portland on the S. S. "Robert Luckenbach" and the cargo discharged to the dock with the cartons opened and slight damage to the contents with corrosion started.

Original value .....\$338.50

Salvage value 50% ..... 169.25

\$169.25

Respondent's Exhibit No. 45—(Continued)

Lot #9

B/L B-5-R 2/12/58.

Shipper—Tribble Cordage Mills, Inc., Woburn, Mass.

Consignee—American Brush Co., 15 N.E. 6th Ave., Portland.

Marks—Same as above.

Commodity—2 ctns. of cotton cordage.

Remarks: No exceptions. Outturned, one (1) ctn. short and adjudged as being lost as result of the fire with the following description of contents.

14 oz. Trojan mop heads, total value and loss  
\$212.80

Lot #10

B/L B-7-R 2/12/58.

Shipper—Walberg and Auge, Worcester, Mass.

Consignee—L. D. Heater Music Co., Portland, Ore.

Marks—Same.

Commodity—3 ctns. of steel stands.

Weight—573#.

Remarks: No exceptions.

This cargo outturned to the dock in a badly fire damaged and warped condition.

Total value .....\$589.53

Total loss ..... 589.53

\$589.53

## Respondent's Exhibit No. 45—(Continued)

## Lot #11

B/L B-14-R &amp; T-10-R.

Shipper—F. H. Snow Canning Co., Inc., Wild-wood, N. J.

Consignee—Northwest Grocery Co., Portland, Ore.

Marks—Various.

Commodity—1170 ctns. canned goods,  
1019 ctns. canned goods.

Remarks: No exceptions at loading port.

It is reported that 883 cartons of this shipment was discharged to the dock prior to the fire, leaving 1306 ctns. in the vessel at the time of the fire. The damage suffered by this shipment consisted mainly of water damage, requiring relabeling and repacking of the cans in the cartons after cans were dried off.

Total value of shipment . . . . . \$11,820.28

Total loss resulting from damaged cans  
and labor and materials involved in  
relabeling and repacking . . . . . \$214.08

## Lot #12

This shipment was discharged from the "Horace Luckenbach" at Los Angeles, California, and reloaded into the "Robert Luckenbach" for shipment to Portland, Oregon.

B/L Nos. N-75-R Horace Luckenbach.

A-1-R Robert Luckenbach.

Respondent's Exhibit No. 45—(Continued)

Shipper—Dana Distributing, Inc., 401 Broadway,  
New York.

Consignee—Panda Terminals, Inc., 20 S.E. Clay  
St., Portland, Ore.

Ultimate Consignee—Bruce Emmett & Co.,  
Portland, Oregon.

Marks—Same as above.

Commodity—583 ctns. of conduit outlet boxes,  
1/S & W/Q attachments.

Weight—7,929#.

Remarks: No exceptions. Outturned one (1) carton wet and open with contents adrift and four (4) pieces short. This one carton was apparently over landed at Los Angeles from the Horace Luckenbach and shipped on to Portland via the "Robert Luckenbach." When landed on the dock, four (4) boxes out of twenty (20) in the carton were missing and all were rejected by the consignee on account of water damage. Total value \$18.40 less 20% for shortage, or \$14.72. This carton was sold for \$4.00 for salvage with a net loss of \$10.72.

Net loss .....\$ 10.72

Lot #13

B/L L-1-B 4/1/58.

Shipper—Longview Fiber Co., Longview, Wash.

Consignee—Waltham Bag & Paper Co., Waltham,  
Mass.

Marks—Various numbers.

Commodity—5906 bag rolls of wrapping paper.

Respondent's Exhibit No. 45—(Continued)

Total Weight—1,405,237#.

Remarks: No exceptions at loading port.

This cargo was loaded at Longview, Washington, on April 1, 1958, in No. 4 & 5 hatches. Subsequent to the extinguishing of the fire, the damaged portion of the cargo was discharged to two (2) barges for transport back to the Longview Fibre Co., at Longview, Washington, for reconditioning and salvage.

The original count of loading onto the two barges was 3,476 rolls, but upon discharge at Longview it was found that actual count was 3,369 rolls, which were reconditioned and subsequently shipped out on the S. S. Horace Luckenbach for delivery to Waltham, Mass., via Boston.

The following are details of the total shipment and its value, and the breakdown on portions delivered by the Robert Luckenbach and Horace Luckenbach, and the damage and loss.

Original shipment, 1,403,571#		
valued at		\$144,309.13
Delivered by S. S. Robert Luckenbach,		
554,519# valued at		57,500.33
Delivered by Horace Luckenbach,		
569,484# valued at		58,142.98
		<hr/>
Original total value		\$144,309.13
Value of cargo delivered		115,643.34
		<hr/>
Value of cargo lost/damaged		\$ 28,665.82
Plus cost of trucking, barging,		
reconditioning and salvage cost		5,302.38
		<hr/>
		\$ 33,968.20
Less Salvage for 16,247# @ 26.25		
per ton		213.24
		<hr/>
Total Net Loss		\$ 33,754.96
		\$33,754.96

## Respondent's Exhibit No. 45—(Continued)

No details have been presented to date giving cost of shipment and reconditioning of the damaged cocoa products outlined on the B/L #P-11-R, 2/25/58.

The following charges have been presented which are incidental to salvage and reconditioning of the cargo.

Willamette Tug and Barge Co.	\$ 3,385.60
Port of Longview	2,253.82
Martin Transfer Co.	674.70
Martin Transfer Co.	1,466.42
Longview Fibre Co.	6,086.39
	<hr/>
	\$13,866.93

The following is a recap of all losses and charges attributed to this incident, which have been presented to date.

Value of cargo loss, exclusive of Lot #3, under B/L P-11-R	\$ 49,429.79
Charges presented incidental to salvage, reconditioning and transport of cargo	13,866.93
	<hr/>
Total	\$ 63,296.72

Submitted without prejudice.

/s/ P. F. BUTLER,  
Surveyor.

Received in evidence January 6, 1960.

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Mr. Krause: That is our case, your Honor.

The Court: That is your case, Mr. Krause?

Mr. Krause: Yes, your Honor. We have no further testimony.

The Court: Mr. Wood, do you have any testimony?

Mr. Wood: No, your Honor. We are relying on the Coast Guard testimony, which it was stipulated may be used, and on the testimony that has already been offered in this court.

The Court: Yes. Mr. Gearin?

Mr. Gearin: We have nothing further, your Honor.

The Court: I understand, Mr. Wood, that you still have [145] some work that you said you had to do on your trial brief?

Mr. Wood: It will only take me a few minutes.

The Court: In addition to that, Mr. Wood, do you want to reply to Mr. Gearin's brief?

Mr. Wood: Yes, I would like to make a brief reply.

The Court: And you will want, as I understand it, approximately one week for that?

Mr. Wood: Yes. I don't really think I will require that much, but I will take that.

The Court: And then you would like about a week or ten days, Mr. Krause?

Mr. Krause: Not any more than a week, your Honor. I would just as soon get it in.

The Court: Then one week for you to reply, and if there are any new matters or if within that period of time there are any supplemental briefs that any of you might like to file, you have the Court's permission to file them.

Mr. Krause: Thank you, sir.

The Court: As you know, Gentlemen, the Court



is particularly interested in the contentions between the two respondents here, Albina and Luckenbach. Although I am not deciding the issue at the present time, it does appear to me there is liability to libelants. Have that in mind when you proceed with your briefs. When I say "liability" I don't mean by that I am saying there is joint liability. I am saying there should be [146] liability some place. That is the way it appears to the Court now; that is, from the factual situation as to how the fire started, and of course there was some damage.

Do you gentlemen have anything more you would like to mention to the Court?

Mr. Wood: I am passing up Luckenbach's brief, your Honor.

The Court: Yes, Mr. Wood.

(Whereupon proceedings in the above matter on said date were concluded.) [147]

[Title of District Court and Cause.]

Civil No. 9997

(Also: Civil Nos. 10,002, 335-59,  
336-59 and 328-59.)

#### REPORTER'S CERTIFICATE

I, John S. Beckwith, an Official Reporter of the above-entitled Court, do hereby certify that on January 6-7, 1960, I reported in shorthand the proceed-

ings occurring in the above-entitled matter; that I thereafter caused my said shorthand notes to be reduced to typewriting under my direction, and that the foregoing transcript, consisting of Pages 1 to 147, both inclusive, constitutes a full, true and correct transcript of said proceedings, so reported by me in shorthand on said dates, as aforesaid, and of the whole thereof.

Dated at Portland, Oregon, this 12th day of July, 1960.

/s/ JOHN S. BECKWITH,  
Official Reporter.

[Endorsed]: Filed August 16, 1960.

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[Title of District Court and Cause.]

### CERTIFICATE OF CLERK

United States of America,  
District of Oregon—ss.

I, R. DeMott, Clerk of the United States District Court for the District of Oregon, do hereby certify that the foregoing documents consisting of Libel in rem and in personam (Civil No. 9997), Libel in rem and in personam (Civil No. 10002), Order allowing Northwest Grocery Company to join in libel, Summary Petition for joinder of cause, Answer of Luckenbach Steamship Company, Inc., etc., Libel (transferred from Southern Division, Northern Dis-

trict, California, No. 27791), Amended libel in rem and in personam (Civil No. 328-59), Libel in personam (Civil No. 336-59), Answer of Albina Engine & Machine Works, Inc., to Amended Cross-Claim, etc., Answer of respondent Albina Engine & Machine Works, Inc., Answer to Cross-Claim and Cross-Libel against Luckenbach Steamship Company, Inc., Answer to Cross-Libel against Luckenbach Steamship Company, Inc., Answer to Cross-Claim and Cross-Libel against Luckenbach Steamship Company, Inc., Answer of Respondent Albina Engine & Machine Works, Inc., Amended Cross-Claim and Cross-Libel of Luckenbach Steamship Company, Inc., against Albina Engine & Machine Works, Inc., etc., Libel in personam (Civil 335-59), Petition under Rule 56 Admiralty to bring in Luckenbach Steamship Co. as third-party respondent, (No. Civil 335-59), Petition under Rule 56 Admiralty to bring in Luckenbach Steamship Company, Inc., as third-party respondent, (No. Civil 336-59), Answer of Albina Engine & Machine Works, Inc. (Civil 335-59), Answer of Albina Engine & Machine Works, Inc., (Civil 328-59), Answer of Albina Engine & Machine Works, Inc. (Civil 336-59), Cross-Libel of Albina Engine & Machine Works, Inc., against Luckenbach Steamship Co., Inc., Stipulation (Civil 328-59), Answer of Luckenbach Steamship Company, Inc. to impleading petition of Albina Engine & Machine Works, Inc., etc., (Civil No. 335-59), Answer of Luckenbach Steamship Company, Inc. to impleading petition of Albina Engine & Machine Works, Inc., etc. (Civil

336-59), Answer of Luckenbach Steamship Company, Inc. to Cross-Libel, Answer of Luckenbach Steamship Company, Inc. and Cross-Claim, Proposed Interlocutory Decree, Consolidated Pretrial Order, Amendments to pretrial order, Opinion, Findings of fact and conclusions of law proposed by claimants, et al., Request of Albina Engine & Machine Works, Inc., for additional findings, Objections of Albina Engine & Machine Works, Inc., to proposed findings, etc., by libelants, Objections of Albina Engine & Machine Works, Inc., to proposed findings by Luckenbach Steamship Company, Inc., Objections of Luckenbach Steamship Company, Inc. to findings and conclusions requested by Albina Engine & Machine Works, Inc., Findings of fact and conclusions of law (Consolidated cases), Interlocutory Decree (Consolidated cases), Notice of Appeal, Bond for Cost on Appeal, Order allowing extension of time to docket appeal, Order to transmit original exhibits to Circuit Court, Designation of record on appeal, Transcript of docket entries (Civil 9997), Transcript of docket entries (Civil 10002), Transcript of docket entries (Civil 328-59), Transcript of docket entries (Civil 335-59), and Transcript of docket entries (Civil 336-59), constitute the record on appeal from an interlocutory decree of said court in cause therein numbered Civil 9997 and Consolidated causes numbered 10001, 10002, 328-59, 335-59 and 336-59, in which Albina Engine & Machine Works, Inc., an Oregon corporation, is Respondent, Cross-Respondent, Cross-Libelant and Appellant, and Hershey Chocolate Corporation, a Delaware corpo-



[Endorsed]: No. 17070. United States Court of Appeals for the Ninth Circuit. Albina Engine & Machine Works, Inc., an Oregon corporation, Appellant, vs. Hershey Chocolate Corporation, a Delaware corporation, et al., Appellee. Transcript of Record. Appeal from the United States District Court for the District of Oregon.

Filed August 23, 1960.

Docketed September 2, 1960.

FRANK H. SCHMID,  
Clerk of the United States Court of Appeals for  
the Ninth Circuit.

Before the United States Court of Appeals  
for the Ninth Circuit

No. 17070

ALBINA ENGINE & MACHINE WORKS, INC.,  
an Oregon Corporation,

Appellant,

vs.

HERSHEY CHOCOLATE CORPORATION, a  
Delaware Corporation; ZELLERBACH PA-  
PER COMPANY, a California Corporation;  
PEYTON BAG COMPANY, a Corporation;  
W. E. FINZER & COMPANY, a Corporation;  
PEJEPSCOT PAPER DIVISION-HEARST  
PUBLISHING COMPANY, INC., a Corpo-  
ration; LUCKENBACH STEAMSHIP COM-  
PANY, INC., a Delaware Corporation; and  
NORTHWEST GROCERY COMPANY, an  
Oregon Corporation,

Appellees.

APPELLANT'S STATEMENT OF  
POINTS ON APPEAL

I.

Finding of Fact No. II is erroneous in adopting the Court's Opinion as findings of fact and conclusions of law, in that the Court's said Opinion does not separately state findings of fact and conclusions of law and for the further reason that said Opinion is unsupported by and contrary to the clear weight of the evidence and is otherwise erroneous in law.

## II.

The Court's Opinion, adopted as findings of fact and conclusions of law, is erroneous in making the following findings, conclusions, statements or holdings:

1. The Court erred in finding that "the can contained little water" (Op. p. 7, line 18), in that such finding is not supported by any substantial evidence and is contrary to the clear weight of the evidence.

2. The Court erred in finding or concluding that Sterling did not know of the failure to connect the city fire hydrant to the ship, nor that any welding was to be done on the forward ladder in No. 5 hold, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

3. The Court erred in finding, concluding or stating that Albina's "use of an acetylene torch \* \* \* under these conditions, was nothing less than wanton conduct. No doubt, it created a situation where the rule of absolute liability should apply," in that such finding, conclusion or statement is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

4. The Court erred in finding or concluding that "Albina was guilty of negligent conduct in using the acetylene torch under the conditions and circumstances then and there existing," in that such



finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

5. The Court erred in finding or concluding that Albina was negligent by reason of violation of Code of Federal Regulations, Title 46, §142.02-20 in that said regulation is, as a matter of law, not applicable to a party in the position of Albina under the facts and circumstances in this case.

6. The Court erred in finding or concluding that said regulation applies to Albina in that said finding or conclusion is erroneous in law.

7. The Court erred in finding or concluding that §16-2527 of the Police Code of the City of Portland is not in conflict with Federal statutes and regulations, in that such finding or conclusion is erroneous in law.

8. The Court erred in finding or concluding that Albina was negligent and caused the fire under specifications Nos. 1, 2, 3, 4, 5, 6, 7 and 8 (of the Consolidated Pretrial Order) in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

9. The Court erred in finding, concluding or stating that Sterling ordered repairs to be made to the after ladder while the repairs were undertaken at the forward ladder, in that such finding, conclusion or statement is wholly immaterial to the issues in the case.

10. The Court erred in finding or concluding that Albina "without further instructions" made repairs at a place other than that where ordered, in that such finding or conclusion is not supported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

11. The Court erred in finding or concluding that Radovich, the Marine Superintendent, did not arrive on the vessel until 6:10 p.m., in that said finding or conclusion is not supported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

12. The Court erred in finding or concluding that at 6:10 p.m., Radovich did not know that repairs were being made on a ladder other than pursuant to the original instructions, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

13. The Court erred in finding or concluding that Radovich was a subordinate and that his duties were very limited, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

14. The Court erred in finding or concluding that Radovich had nothing whatsoever to do with the repair of the ship, in that such finding or conclusion is unsupported by any substantial evidence,

is contrary to the clear weight of the evidence and is otherwise erroneous in law.

15. The Court erred in finding or concluding that the burden is on the libelant to prove that the neglect of the owner caused the fire, in that such finding or conclusion is erroneous in law.

16. The Court erred in attempting to distinguish *American Mail Line, Ltd. vs. Tokyo Marine & Fire Insurance Co., Ltd.*, 9th Cir., 1959, 270 F. 2d 499, upon the basis that in the instant case there is no evidence that anyone failed to use reasonable diligence after the start of the fire, in that such distinction is of no legal import, and is immaterial under the clear weight of the evidence as to the facts and circumstances of this case.

17. The Court erred in finding or concluding that the fire statute is applicable, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

18. The Court erred in finding or concluding that Luckenbach and its superior officers were guilty of no negligence which caused the fire, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

19. The Court erred in finding or concluding that the fire was caused by Albina, in that such finding or conclusion is unsupported by any substan-

tial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

20. The Court erred in finding or concluding that no superior officer for Luckenbach had anything to do with welding on the forward ladder, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

21. The Court erred in finding or concluding that Radovich had nothing to do with the repair of the ship or with removal of cargo from around the ladder, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

22. The Court erred in finding or concluding that Albina is liable to Luckenbach, on the basis of a breach of the warranty of workmanlike service, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

23. The Court erred in finding or concluding that the other questions raised by the briefs, with the possible exception of general average, are academic, in that such finding or conclusion is erroneous in law.

24. The Court erred in finding or concluding that libelants are entitled to a decree against Albina

in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

25. The Court erred in finding or concluding that Luckenbach is entitled to a decree against Albina for damage to the vessel, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

26. The Court erred in finding or concluding that Albina is not entitled to a decree against Luckenbach for indemnity, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

27. The Court erred in finding or concluding that Albina is not entitled to a decree against Luckenbach for the repairs to the vessel other than repairs independent of the fire, in that such finding or conclusion is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

### III.

Finding of Fact No. III, that the fire was not caused by the design or neglect of Luckenbach, is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

## IV.

Finding of Fact No. IV, that the fire was caused by the gross negligence of Albina, is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

## V.

Finding of Fact No. VI, insofar as it finds that Radovich was a mere subordinate employee of Luckenbach and not a managerial officer, that his functions were confined to Luckenbach's dock in Portland, that he reported to his superiors in the Portland uptown office, and that he had nothing to do with repairs, is unsupported by any evidence whatever.

## VI.

Finding of Fact No. VII, insofar as it finds that Sterling did not know that the welding was to be on the forward ladder and that if the welding had been done aft there would have been no fire, is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

## VII.

Finding of Fact No. X, that Radovich had nothing to do with the repairs to the ladders and no knowledge with respect to removal of a section of the fire line, or the arrangements to supply substitute water from the dock hydrant, is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

VIII.

Finding of Fact No. XI, insofar as it finds that Radovich did not know the welders would be aboard until he saw the sparks, is unsupported by any evidence whatever, and the remainder of said finding is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

IX.

Finding of Fact No. XII, that neither Sterling nor Radovich were privy to the cause or progress of the fire, is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

X.

Finding of Fact No. XIII, insofar as it finds that the fire was caused solely by the gross negligence of Albina, that the welding could have been safely done if proper and usual precautions were taken, that if any of the suggested precautions were taken there would have been no fire, that no precaution was taken, and that the only thing relied on was a can of longshoreman's drinking water which was utterly inadequate, is self-contradictory, is speculative, is unsupported by any substantial evidence, is contrary to the clear weight of the evidence and is otherwise erroneous in law.

XI.

Finding of Fact No. XVI, that Albina made no objection to Luckenbach with respect to conditions

in the hold, is erroneous in that it is immaterial, irrelevant, ignores other facts, and ignores Luckenbach's duty to be aware of conditions in the hold.

## XII.

Finding of Fact No. XVII, that there was no contractual or other obligation by Luckenbach with respect to the readiness and availability of the fire line and that Albina in no way relied on it when it undertook the job, is unsupported by any substantial evidence, is contrary to the clear weight of the evidence, and is otherwise erroneous in law.

## XIII.

Conclusions of Law Nos. I through VI, inclusive, are contrary to law, unsupported by any substantial evidence, and contrary to the clear weight of the evidence.

## XIV.

The Court erred in holding that the sole cause of damage was negligence by Albina.

## XV.

The Court erred in refusing to hold that Luckenbach's negligence and/or the unseaworthiness of the vessel constituted the sole or a contributing cause of the fire.

## XVI.

The Court erred in refusing to hold that Luckenbach's negligence and/or the unseaworthiness of the vessel constituted the sole cause of the spread



of the fire beyond the burlap and construction paper stowed forward of the forward ladder in No. 5 hold.

#### XVII.

The Court erred in refusing to hold that Luckenbach's negligence and/or the unseaworthiness of the vessel constituted the sole proximate cause of all fire damage to the vessel.

#### XVIII.

The Court erred in refusing to conclude that libelants' sole right of recovery was against Luckenbach or, in the alternative, in refusing to conclude that Albina was entitled to indemnity or contribution from Luckenbach, for such amounts as Albina might be required to pay to the libelants.

#### XIX.

Based upon the foregoing points, Appellant Albina contends that the Decree of the District Court was erroneous in awarding any recovery to the libelants against Albina, and in awarding any recovery to cross-claimant Luckenbach against Albina, and in denying Albina recovery against Luckenbach on its cross-libels, and further contends that a decree should have been entered dismissing the libels against Albina and allowing Albina its costs, or, in the alternative, that a decree should have been entered against Luckenbach allowing Albina to recover from Luckenbach indemnity or contribution on account of all amounts which Albina was required to pay to the libelants, and in any event that

the decree entered should have dismissed Luckenbach's cross-claims against Albina and should have allowed recovery against Luckenbach on Albina's cross-libelants.

KRAUSE, LINDSAY &  
NAHSTOLL,

/s/ GUNTHER F. KRAUSE,

/s/ ALAN H. JOHANSEN,

Proctors for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed September 2, 1960.

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[Title of Court of Appeals and Cause.]

No. 17,070

DESIGNATION OF RECORD FOR  
PRINTING ON APPEAL

The appellant herein, Albina Engine & Machine Works, Inc., does hereby designate the following parts of the record to be printed on appeal herein:

1. Libel in Rem and in Personam for Cargo Damage (Civil No. 9997—Hershey Chocolate Corp. case—Document 1).
2. Answer of Luckenbach Steamship Company, Inc. and Cross-Claim Against Albina Engine & Machine Works, Inc. (Civil No. 9997—Hershey Chocolate Corp. case).

3. Answer of Respondent Albina Engine & Machine Works, Inc. (Civil No. 9997—Hershey Chocolate Corp. case).

4. Answer to Cross-Claim and Cross-Libel Against Luckenbach Steamship Company, Inc. (Civil No. 9997—Hershey Chocolate Corp. case).

(Pleadings in the other consolidated cases are of substantially the same legal effect, except for the respective libelants' allegations as to the time and place of shipment, the nature of the goods shipped, and the amount of the damage sustained, and except for the suit instituted by Zellerbach Paper Company and Northwest Grocery Company (Civil No. 10,002), wherein Albina's "Answer to Cross-Claim and Cross-Libel Against Luckenbach Steamship Company, Inc.," sets forth an additional further answer and second cause of suit, and wherein Luckenbach filed an "Amended Cross-Claim and Cross-Libel of Luckenbach Steamship Company, Inc., Against Albina Engine & Machine Works, Inc., and Answer of Luckenbach Steamship Company, Inc., to Cross-Libel of Albina Engine & Machine Works, Inc." and wherein Albina filed its "Answer of Albina Engine & Machine Works, Inc., to Amended Cross-Claim and Cross-Libel of Luckenbach Steamship Company, Inc." These additional pleadings are designated below as Items Nos. 5, 6 and 7.)

5. Albina's "Answer to Cross-Claim and Cross-Libel Against Luckenbach Steamship Company, Inc." (Civil No. 10,002—Zellerbach Paper Company case).

6. "Amended Cross-Claim and Cross-Libel of Luckenbach Steamship Company, Inc. Against Albina Engine & Machine Works, Inc., and Answer of Luckenbach Steamship Company, Inc., to Cross-Libel of Albina Engine & Machine Works, Inc." (Civil No. 10,002—Zellerbach Paper Company case—Document 14).

7. "Answer of Albina Engine & Machine Works, Inc., to Amended Cross-Claim and Cross-Libel of Luckenbach Steamship Company, Inc." (Civil No. 10,002—Zellerbach Paper Company case).

8. Consolidated Pretrial Order (Document 28).

9. Amendments to Pretrial Order (Document 29).

10. Transcript of Proceedings.

11. Exhibits as follows:

A. Libelants' Exhibit 4. (Certified copy of Police Code, City of Portland, Ordinance No. 16-2527).

B. Libelants' Exhibit 7-A (statement of Smith—used for impeachment).

C. Libelants' Exhibit 7-B (statement of Riley—used for impeachment).

D. Luckenbach's Exhibit 23 (Coast Guard Transcript).

E. Albina's Exhibit 44 (survey report—ship damage).

F. Albina's Exhibit 45 (survey report—cargo damage).

12. Opinion of the District Court (Document 30).

13. Findings of Fact and Conclusions of Law (Document 36).

14. Interlocutory Decree (Document 37).

15. Notice of Appeal and Bond (Documents 38 and 39).

KRAUSE, LINDSAY  
& NAHSTOLL,

/s/ GUNTHER F. KRAUSE,

/s/ ALAN H. JOHANSEN,

Proctors for Appellant.

Affidavit of service by mail attached.

[Endorsed]: Filed September 2, 1960.

